United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7520

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 76-7520

B
P/S

MERLE W. LEONARD,

Plaintiff-Appellant,

v.

REYNOLDS SECURITIES, INCORPORATED, J. C. BRADFORD & COMPANY, VOGEL LORBER, INCORPORATED, JOSEPH EZRA & COMPANY, INCORPORATED, GOLDNICK & SON, INCORPORATED and SAMUEL GOMBERG,

Defendants-Appellees.

UNITED STATES COURT OF APPEALS
FILED
DEC 23 1976
R. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPEAL FROM ORDER OF UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

DATE	
Nov. 29-72	Filed Complaint, Issued Summons.
Dec. 27-72	Filed stipulation and order extending certain defendants time to answer complaint to 1/19/73. So ordered. Pierce, J.
Dec. 27-72	Filed stipulation and order extending Goldman, Sachs & Co. and Reynolds Securities, Inc.'s time to answer complaint to 1/15/73. So ordered. Pierce, J.
Jan. 3-73	Filed stipulation and order extending deft. Henry Blair Co. Inc.'s time to answer complaint to 1/25/73. So ordered. Pierce, J.
Jan. 11-73	Filed Defts. Stipulation re Complaint returnable 1/15/73. So ordered. Pierce, J.

DOCKET ENTRIES

DATE	
Jan. 17-73	Files Pltff's Notice of Motion re: order pursuant to Rule 4(c) to relieve and displace firm of Wolf Popper Ross Wolf & Jones as atty of record for pltff and designate A. Arnold Gershon as atty of record for pltff, returnable 1/23/73, 10:00 A.M.
Jan. 17-73	Filed Stipulation of Deft. Dean Witter & Co., Inc., Goldman, Sachs & Co., Reynolds Securities Inc. re: Complaint extended to include 1/29/73. So Ordered. Pierce, J.
Jan. 22-73	Filed Affdvt. of Donald N. Ruby, for pltff in Opposition to Motion dated 1/17/73.
Jan. 24-73	Filed ANSWER of Defts. to Complaint.
Jan. 30-73	Filed Interrogatories to Pltff relating to Determination of Class Action Questions.

DOCKET ENTRIES

DATE	
Jan. 30-73	Filed ANSWER of Deft. Goldman, Bache & Co. to Complaint.
Jan.30-73	Filed ANSWER of Deft. Reynolds Securities, Inc. to Complaint.
Jan. 30-73	Filed ANSWER of Dean Witter & Co. Inc. to Complaint.
Jan.29-73	Filed MEMORANDUM ENDORSED ON Notice of Motion dated 1/17/73. Motion granted. So Ordered. Pierce, J. M/N
Jan. 29-73	Filed ANSWER of Deft, Henry Blair & Co. to Complaint.
Jan. 29-73	Filed ANSWER of Deft, Marsha, Block, Leibler & Co. Inc. to Complaint.
Jan. 30-73	Filed ANSWER of Deft Merrill Lynch,Pierce, Fenner & Smith, Inc. to Complaint.
Jan. 30-73	Filed Reply Affdvt of Donald N. Ruby for Pltff.

DOCKET ENTRIES

DATE	
Jan. 30-73	Filed ANSWER of Deft. J.C.Bradford & Co. to Complaint.
Jan. 31-73	Filed NOTICE Court has granted pltff's motion to change Attys.
Jan. 29-73	Filed Order to Show Cause of Pltff re extension of time before Hon. Pierce in Room 906, returnable 1/31/73, 9:45 A.M.
Mar. 1-73	Filed Affdvt of A. Arnold Gershon.
Mar. 1-73	Filed Memorandum in response to Affdvt of Donald N. Ruby in opposition to Motion to designate A. Arnold Gershon as atty of record for pltff.
Feb. 28-73	Filed ORDER Of Pltff to extend time re: class action determination,etc. Ordered that pltff shall serve his notice of motion for class action determination to this case on or about 3/16/73, PIERCE, J.

DOCKET ENTRIES

DATE	
Mar. 14-73	Filed Stip & Order for Pltff to answer or object to Defts' Interrogs. is extended to 3/28/73 that pltff shall serve his notice of motion for class action determination on or about 4/13/73. Pierce, J.
Apr. 2-73	Filed Summons and marshals ret. Served: Merrill, Lynch, Pierce, Fenner & Smith, Inc. on 11/30/72 Reynolds Securities, Inc. on 12/6/72 Dean Witter & Co. on 12/19/72 J.C. Bradford & Co. on 12/11/72 Goldman Sachs & Co. on 12/11/72 M.C. Adams & Co. Inc. on 12/6/72 Henry Blair & Co.,Inc. on 12/6/72 Cohn Ivers & Co., Inc. on 12/8/72 Alvin V. Filer & Co., Inc. on 12/27/72 Filer Schmidt & Co., Inc. on 12/6/72 International Option Corp. on 12/6/72 Krinski Cassio & Co. on 12/26/72 Saul Lerner Co., Inc. on 12/6/72 Lombard Street, Inc. on 12/6/72 Marsh Block Leibler & Co., Inc. on 12/26/72

DOCKET ENTRIES

DATE	
Apr. 2-73 (cont. from Page A5)	Ragnar Option Corp., on 12/6/72 Thomas Haab & Botts on 12/6/72. Thomas Haab & Boetts on 12/6/72 U.S. Option Corp. on 12/26/72 Universal Options Inc. on 12/6/72 Vogel Lorber Inc. on 12/6/72 Wilkins Rose, Inc. on 12/6/72 Unable to serve Alvin V. Filer & Co., Inc., Godnick & Son, Inc., Samuel Comberg.
Jan. 14-73	Filed Memorandum of Law in support of motion to relieve and displace Wolf Popper Ross Wolf and Jones, as Attorneys of Record for Pltff. etc.
Apr. 4-73	Filed stipulation and order extending plaintiff's time to answer or object to defendants' interrogs to 4/27/73, and that pltf. shall serve his notice of

DOCKET ENTRIES

DATE	
Apr. 4-73 (cont. from Pg. A6)	motion for class action determination on or about 5/14/73. So ordered. Pierce, J.
May 25-73	Filed Stip & Order that the time for pltff. to serve his motion for class action determination is extended to 6/22/73. Pierce, J.
Jun. 12-73	Filed Pltff's Interrogs. First Series.
Jun. 11-73	Filed Pltff. for his answers & objections to the Interrogs. of dft.
Jun. 11-73	Filed Notice for Demov Morris Levin & Shein as counsel for pltff.
July 13-73	Filed Stip & Order that the time for dfts. to answer pltffs. First Set of Interrogs. is extended to 8/13/73. Stewart J.

DOCKET ENTRIES

DATE	
Aug. 20-73	Filed Stip & Order that the time for defts. to answer to pltffs. First Set of Interrogs. is extended to 9/3/73. Pierce J.
Sep. 4-73	Filed Memorandum in support of the motions for summary judgment by defts. Merrill Lynch, Pierce Fenner & Smith Inc, et al.
Sep. 4-73	Filed Memorandum in support of the motions for summary judgment by defts. Cohn, Ivers & Co., Inc., et al.
Sep. 4-73	Filed Defts. Dean Witter & Co., & Goldman Sachs & Co. Notice of Motion. Re: Summary Judgment, Dismiss Complaint. ret. 9/18/73.

DOCKET ENTRIES

DATE	
Sep. 4-73	Filed Defts. Dean Witter & Co., et al. Statement of material facts pursuant to Gen rule 9(g). (also in 73 Civ.18 & 73 Civ 318,73 Civ. 852)
Sep. 5-73	Filed Notice of Joinder in motion by Deft. J.C. Bradford & Co.
Sep. 5-73	Filed Memorandum in support of motion for summary judgment by deft. J.C. Bradford & Co.
Sep. 21-73	Filed stip. and order that the defts' motion for summary judgment ret. 9-18-73 is extended to 10-23-73. Pierce, J.
Oct. 29-73	Filed Stip & Order adjourning motion for summary judgment ret. 10/23/73 to 11/13/73. Pierce J.

DOCKET ENTRIES

DATE	
Nov 12-73	Filed Affidavit by Irving Bizar in opposition to motion for summary judgment.
Nov. 12-73	Filed Pltff's Opposition memorandum of Law.
Nov. 21-73	Filed defts.(Dean, Witter & Co. et al) affdvt in support of motion for Summary Judgment.
Nov. 21-73	Filed defts.(Dean,Witter & Co et al) memorandum in support of motion for Summary Judgment.
Mar. 29-74	Filed Memorandum Order motions for summary judgment in the actions of 72 Civ 5065, 78 Civ 318, 78 Civ 852 shall be heard at 4:00 p.m. on 4/11/74 in courtroom 2804. Pierce J. (mailed notice)

DOCKET ENTRIES

DATE	
Oct. 2-74	Filed OPINION #41,249- Motions for Summary Judgment are in all respects granted. Sumit Order-- Pierce, J.
Oct. 11-74	Filed order of referral to Magistrate Goettel-- Pierce, J.
Nov. 7-74	Filed order of dismissal as to deft. Cohn, Ivers & Co with prejudice-- Pierce, J. Judgment Entered-Clerk.
Nov. 7-74	Filed order of dismissal as to defts. with prejudice-Merrill Lynch, Pierce, Fenner, & Smith, Inc., Dean Witter & Co., Goldman, Sachs & Co., Henry Blair & Co., Inc., Alvin V. Filer & Co., Inc., Filer Schmidt & Co., Inc., Int'l Option Corp., Krinski,

DOCKET ENTRIES

DATE	
Nov. 7-74 (Cont. from Pg.)	Cassio & Co., Inc., Lombard Street, Inc., Marsh, Block Leibler & Co., Inc., M. C. Adams & Co., Inc., Ragnar Option Corp., Saul Lerner Co., Thomas Haab & Botts, Universal Options, Inc., U.S. Option Corp. and Wilkins-Rose, Inc., with costs-- Gagliardi, J. --Judgment Entered-Clerk. Mailed notices.
Dec. 4-74	Filed Bill of Costs docket as Judgment #74,931 as taxed in the sum of $84.80 in favor of defts. Merrill Lynch Pierce Fenner & Smith as against pltff. & added to the Judgment. Clerk.

DOCKET ENTRIES

DATE	
Dec. 18-74	Filed deft's (Vogel) answers to interrogs.
Dec. 19-74	Filed answers & objections of deft. J.C. Bradford & Co. to interrogs.
Dec. 19-74	Filed answers & objections of deft. Reynolds Securities to interrogs.
Dec. 26-74	Filed Pltffs. Notice of Motion & affidavit for order compelling deft J.C. Bradford & Co. to produce certain records. ret. 1/6/74. (Mag. Goettel)
Dec. 26-74	Filed Pltffs affidavit & Notice of Motion for order compelling Vogel Lorber Inc. to produce certain records. ret. 1/6/74. (Mag. Goettel)

DOCKET ENTRIES

DATE	
Dec. 26-74	Filed Pltffs. affidavit & notice of motion for order compelling Reynolds Securities Inc. to produce certain records, ret. 1/6/74. (Mag. Goettel)
Jan. 2-75	Filed defts' interrogs. & requests for production
Jan. 15-75	PRE-TRIAL CONFERENCE HELD BY Goettel

DOCKET ENTRIES

DATE	
Jan.16-75	Filed memo endorsed on motion filed 12-26-74--(to produce)-- Motion withdrawn- So Ordered-- Goettel, Magistrate Judge.
Feb.19-75	Filed pltff's rejoinder memorandum.
Feb.19-75	Filed deft's (Lombard St. Inc.) notice of joinder in motion for summary judgment.
Feb. 19-75	Filed Deft's (Lombard St.Inc.) memorandum in support of motion for summary judgt.
Feb.19-75	Filed pltff's rejoinder affdvt in opposition to motion for summary judgment.
Apr. 8-75	Filed stip & order changing caption of action-- Pierce, J.
Apr.17-75	Filed stip & order Re: Confidential Documents.-- Pierce, J.
Apr.16-75	PRE-TRIAL CONFERENCE held by Goettel.
Apr. 22-75	Filed pltff's second set of interrogs.

DOCKET ENTRIES

DATE	
June 4-75	Filed stip & order deft's (Reynolds Securities) time to answer 2nd set of interrogs. to 6-6-75--Pierce, J.
June 4-75	PRE-TRIAL CONFERENCE HELD BY Goettel.
June 18-75	Filed Answers and objection of deft Reynolds Securities, Inc. to Pltff. interrog. Second Set.
June 23-75	Filed Stip & Order that the time that Reynolds Securities, Inc. may answer etc. is extended to 6-20-75. Pierce, J. M/N.
July 1-75	Filed Pltffs Affdvt & Notice of Motion for an order purs to Rule 37 FRCP compelling deft. Reynolds Securities Inc. to serve further answers to pltffs interrogs., etc. as indicated rtble before U.S. Mag. Goettel on 8-27-75.

DOCKET ENTRIES

DATE	
July 1-75	Filed Pltff memorandum in support of the motion.
08-5-75	Filed Pltffs. answers & Objections to Deft's. 2nd Set of interrogs.
08-19-75	Filed Deft. J.C. Bradford & Co. affidavit and notice of motion for order dismissing complaint or strike the class action allegations. Ret. 8-25-75 before Magistrate Goettel.
08-19-75	Filed Deft. J.C. Bradford & Co.'s Memorandum in support of its motion for sanction under FRCP 37.
08-21-75	Filed Deft's (Reynolds Sec.) memorandum in opposition to Pltff's motion to compel further answers to interrogs.

DOCKET ENTRIES

DATE	
08-25-75	Filed Deft. Vogel Lorber Inc. Notice of Joinder in Motion of deft. Reynolds Securities Inc. ret. before Magistrate Goettel on 8-25-75.
08-25-75	PRE-TRIAL CONFERENCE HELD BY Goettel.
9-9-75	Filed Pltffs Rule 9F Statement.
9-9-75	Filed Report & Recommendation of Mag. Goettel to Pierce, J. (motion)
9-26-75	Filed memo endorsed on memo filed 8-19-75: The recommendation of the Mag. are adopted, etc. as indicated. Pierce, J. M/N
Oct 1-75	Filed Pltffs Affidavit & Notice of Motion for an order determining this action to be a class action, etc. as indicated on 10-14-75.

DOCKET ENTRIES

DATE	
Oct 1-75	Filed Pltffs memo of law in support of said motion.
Oct 21-75	Filed stip & order that motion of pltff is adjourned to 11-14-75. Pierce,J.
Nov 20-75	Filed stip & order that the time of pltffs motion is adjourned to 12-22-75. Pierce, J.
Dec 31-75	Filed stip & order that pltffs motion, etc., is adjourned to 1-30-76. Pierce,J.
1-12-76	Filed Notice of change of Firm Name by Brown Wood Fuller Caldwell & Ivey to Brown Wood Ivey Mitchell & Petty.
2-4-76	Filed stip & order that pltffs action is extended to 3-5-76. Pierce, J.
3-8-76	Filed Affidavit of Reynolds Securities deft in opposition to pltffs pending motion, etc. as indicated.

DOCKET ENTRIES

DATE	
3-8-76	Filed deft. memorandum in opposition to pltffs motion,etc. as indicated.
3-11-76	Filed Notice of Joinder by deft. Lorber, Vogel & Berger 3-11-76.
3-17-76	Filed Pltff's. reply affidavit in support of motion for summary judgment and for class-action determination & in opposition to Defts'. motion to dismiss.
3-24-76	Filed Affidavit of deft Reynolds Securities dtd 3-23-76
03-24-76	Filed deft's reply memorandum in opposition to pltffs motion,etc. as indicated.
03-31-76	Filed pltffs rebuttal memorandum in reponse to defts reply memorandum etc. as indicated.

DOCKET ENTRIES

DATE	
Apr. 9-76	Filed Notice of Change of address of the law firm of Lorber, Vogel, and Berger to 200 CENTRAL PARK SO. N.Y.C. N.Y. 10019
Apr. 29-76	Filed stip & order that the firm of Brown, Wood, Ivey Mitchell & Petty, One Liberty Plaza, N.Y.C. N.Y. is substituted in the above action as attys of record for Reynolds Securities, Inc. as indicated. Pierce, J.
June 21-76	Filed pltffs Affidavit & Notice of Motion for an order declaring the above action as a class action.
June 22-76	Filed pltffs opposing affidavit in opposition to the motion of deft J.C. Bradford & Co.

DOCKET ENTRIES

DATE	
June 22--76	Filed pltffs opposing memorandum to motion of J.C. Bradford & Co.
June 22-76	Filed pltffs memorandum in support of his motion for class determination.
June 22-76	Filed Opinion #44627: Motion denied without prejudice to renewal upon conditions set forth as indicated. Pierce, J. M/N.
June 25-76	Filed Order that pltffs telephone application for a stay of the order of this Court sptd 6-21-76 is hereby denied. Pierce, J.
June 29-76	Filed pltffs answers to defts. second set of interrogatories.

DOCKET ENTRIES

DATE	
July 6-76	Filed True Copy of U.S.C.A. Mandate Ordered that the petition is denied.Etc. Mulligan CJ & Gurfein CJ. (mailed notice)
Aug. 6-76	Filed Pltffs Affidavit & Notice of Motion for an order granting partial summary judgment, etc. rtble on 8-18-76.
Aug. 19-76	Filed memo endorsed on motion filed 8-6-76. The motion for class certification is denied. Accordingly, all papers in opposition to the motion for partial summary judgment shall be filed within 30 days of the filing of this order, Pierce, J. M/N.

DOCKET ENTRIES

DATE	
Sept. 8-76	Filed Order that pltffs motion for partial summary judgment is hereby adjourned sine die, and this case is hereby transferred to the suspense docket of this Court per the outcome of pltffs appeal from the denial of the class action motion, Pierce, J.
Sept. 14-76	Filed Costs on Appeal Bond #S763519 in the sum of $250.00 Northwestern Insurance Company of Milwaukee, Wisconsin.
Sept. 14-76	Filed Notice that pltff appeals to the U.S.C.A.F. from the order of the U.S.D.C. dtd. 8-18-76. M/N.

DOCKET ENTRIES

DATE	
Sept. 24-76	Filed Notice that the record on appeal has been certified and transmitted to the U.S.C.AP. for the second circuit this day of 9-24-76.

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MERLE W. LEONARD, Plaintiff, -against- MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., REYNOLDS SECURITIES, INC., DEAN WITTER & CO., J.C. BRADFORD & CO., GOLDMAN, SACHS & CO., M.C. ADAMS & CO., INC., HENRY BLAIR & CO., INC., COHN, IVERS & CO., INC., JOSEPH EZRA & CO., INC., ALVIN V. FILER & CO., INC., FILER, SCHMIDT & CO., INC., GODNICK & SON, INC., SAMUEL GOMBERG, INTERNATIONAL OPTION CORP., KRINSKI CASSIO & CO., SAUL LERNER CO., INC., LOMBARD STREET, INC., MARSH, BLOCK, LEIBLER & CO., INC., RAGNAR OPTION CORP., THOMAS HAAB & BOTTS, U.S. OPTION CORP., UNIVERSAL OPTIONS, INC., VOGEL-LORBER, INC., and WILKINS ROSE, INC., Defendants.	COMPLAINT CLASS ACTION PLAINTIFF DEMANDS A TRIAL BY JURY

Plaintiff by his attorneys Wolf Popper Ross Wolf & Jones alleges the following:

1. This action arises under the Securities Act of 1933, as amended, 15 U.S.C.A. §77a, et seq. (the "Act"). Jurisdiction is conferred upon this Court by 15 U.S.C.A. §77v.

COMPLAINT

2. Plaintiff purchased call options (hereinafter referred to as "Options") from defendants since November 29, 1971.

3. Plaintiff brings this action on behalf of himself and all others similarly situated who purchased Options from the defendants since November 29, 1971.

4. Class Action Allegations:

(a) This action is properly maintainable as a class action under Rule 23(b) of the Federal Rules of Civil Procedure.

(b) The class consists of all persons who purchased Options since November 29, 1971, and who have subsequently sustained any losses as a result thereof or who hold said Options.

(c) The class includes several thousand persons their precise number cannot be ascertained at this time. Joinder of all class members is impracticable.

(d) Plaintiff will fairly and adequately protect the interests of the class inasmuch as plaintiff is a member of said class, and his claims are typical of the claims of all class members.

(e) The questions of law and fact common to the class include the questions whether the Options sold to the members of the class are securities under the Act and are subject to the registration requirements of the Act; and whether the offer to sell or sale of unregistered Options is a violation of the Act for which the defendants are liable under the Act.

(f) The questions of law and fact common to the members of the class predominate over any questions affecting individual members.

(g) A class action is superior to other availab methods for the fair and efficient adjudication of the controversy.

5. All Options give the purchaser thereof the right to buy a stated number of shares of a designated stock at a stated price per share (which is adjustable for dividends, rights, warrants, stock splits, reverse splits and other similar actions) for a period of time.

6. All the defendants are in the securities business, and they all engage in the business of selling and offering for sale Options on behalf of themselves and others.

7. Since November 29, 1971 all the defendants have issued Options and have sold or offered to sell Options on behalf of issuers thereof; all the defendants are directly or indirectly engaged in the business of selling Options or offering to sell Options. Said Options have been and are now widely offered for sale and sold to the public.

8. Since November 29, 1971 all the defendants have sold or offered for sale Options to members of the class.

9. The Options sold or offered for sale by defendant to members of the class were and are securities within the meaning of Section 2(1) of the Act, 15 U.S.C.A. §77b(1).

10. All the defendants offered to sell and sold Options to members of the class when no registration statement was filed or in effect as to such Options.

11. The defendants' sales of Options and offers to sell Options to members of the class were accomplished directly and indirectly by the use of mails and means and instruments of transportation and communication in interstate commerce.

12. As a result of the above described acts of defendants they have violated section 5(a) and (c) of the Act, 15 U.S.C.A. §77e(a) and (c) in that they have, directly and indirectly, by the use of the mails and of means and instruments of transportation and communication in interstate commerce, offered to sell and sold securities when no registration statement was filed or in effect as to such securities.

13. By reason of the acts of the defendants as set out herein, defendants are liable to plaintiff and other members of the class pursuant to section 12(1) of the Act, 15 U.S.C.A. §771(1).

WHEREFORE, plaintiff demands:

1. That judgment be entered holding the respective defendants liable to the members of the class to whom they have sold or offered to sell Options for all damages sustained by them as a result thereof, plus interest.

2. That judgment be entered holding the respective defendants liable to the members of the class to whom they have sold or offered to sell Options for the consideration paid for such Options which are still in effect, upon tender of the same, plus

interest.

3. That plaintiff recover costs and disbursements including reasonable attorneys' and accountants' fees.

4. That this Court grant such other and further relief as it shall deem just and proper.

WOLF POPPER ROSS WOLF & JONES

By: _____
A Member of the Firm
Attorneys for Plaintiff
845 Third Avenue
New York, New York 10022
PL 9-4600

ANSWER OF DEFENDANT
REYNOLDS SECURITIES, INC.

Same Title

Defendant Reynolds Securities, Inc. ("Reynolds Securities"), by Sullivan & Cromwell, its attorneys, answers the complaint as follows:

1. Denies each and every allegation of paragraph 1 of the complaint, except admits that the action purportedly arises under and jurisdiction is purportedly based upon the statutes referred to in paragraph 1.

2. Denies each and every allegation of paragraph 2 of the complaint as to Reynolds Securities and denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 as to the other named defendants, except admits that plaintiff intends the term "Options" as used in the complaint to have the meaning ascribed to it in paragraph 2.

3. Denies each and every allegation of paragraph 3 of the complaint, except admits that plaintiff purports to bring this action on behalf of himself and all others similarly situated who purchased call options from the defendants since November 29, 1971.

ANSWER OF DEFENDANT
REYNOLDS SECURITIES, INC.

4. Responding to paragraph 4 of the complaint:

4(a) and (b). Denies each and every allegation of subparagraphs 4(a) and 4(b) of the complaint.

4(c) and (d). Denies knowledge or information sufficient to form a belief as to the truth of the allegations of subparagraphs 4(c) and 4(d) of the complaint, except denies the existence of any class properly maintainable under Rule 23 of the Federal Rules of Civil Procedure.

4(e), (f) and (g). Denies each and every allegation of subparagraphs 4(e), 4(f) and 4(g), inclusive, of the complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the complaint, except admits that during the period of time referred to in the complaint, call options sold by Reynolds Securities, for its own account or as agent, provided that for a specified period of time the purchaser thereof had an option to purchase a stated number of shares of the stock of a designated corporation at a specified price per share, which price per share was subject to adjustment under circumstances specified in the call option contract.

6. Denies each and every allegation of paragraph

6 of the complaint as to Reynolds Securities, except admits that Reynolds Securities is engaged in the business of, among other things, dealing in securities as broker and otherwise and that during the period of time referred to in the complaint Reynolds Securities sold, for its own account or as agent, call options written by others and denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 as to the other named defendants.

7. Denies each and every allegation of the first sentence of paragraph 7 of the complaint as to Reynolds Securities, except admits that during the period of time referred to in the complaint Reynolds Securities sold, for its own account or as agent, call options written by others, and denies knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of said paragraph as to the other named defendants; and denies each and every allegation of the second sentence of paragraph 7 of the complaint, except admits that during the period of time referred to in the complaint some call options were sold and offered for sale to members of the public.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the complaint, except denies the existence of any class properly maintainable under Rule 23 of the Federal Rules of Civil Procedure.

9. Denies each and every allegation of paragraph 9 of the complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the complaint, except admits that during the period of time referred to in the complaint registration statements were not filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to the call options sold by Reynolds Securities.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the complaint, except denies the existence of any class properly maintainable under Rule 23 of the Federal Rules of Civil Procedure.

12. Denies each and every allegation of paragraphs 12 and 13 of the complaint.

ANSWER OF DEFENDANT
REYNOLDS SECURITIES, INC.

FIRST AFFIRMATIVE DEFENSE

13. The complaint fails to state a claim against defendant Reynolds Securities upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

14. The claims alleged in the complaint, in whole or in part, are barred by the applicable statute or statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

15. The claims alleged in the complaint, in whole or in part, are barred by plaintiff's laches.

FOURTH AFFIRMATIVE DEFENSE

16. Upon information and belief, prior to and after plaintiff's purchase of each of the call options which are the subject matter of this action, plaintiff knew or reasonably should have known that a registration statement for said call options had not been and would not be filed with the Securities and Exchange Commission under the Securities Act of 1933 and plaintiff is thereby estopped from asserting and/or has waived the claims alleged in the complaint.

ANSWER OF DEFENDANT
REYNOLDS SECURITIES, INC.

FIFTH AFFIRMATIVE DEFENSE

17. To the extent that the complaint's allegations that any or all options sold by Reynolds Securities were "securities", as that term is used in the Securities Act of 1933, are proved, said call options, and any transactions by Reynolds Securities in connection with said call options, were and are exempted from the registration requirements of said Act.

WHEREFORE, defendant Reynolds Securities, Inc. demands judgment be entered against plaintiff and for defendant together with the costs and disbursements of this action, including counsel fees, and such other and further relief to defendant as the Court may deem just and proper.

Dated: New York, New York
January 29, 1973

SULLIVAN & CROMWELL

By MARVIN SCHWARTZ
(A Member of the Firm)
Attorneys for Defendant
Reynolds Securities, Inc.,
48 Wall Street,
New York, New York 10005
(212) HAnover 2-8100

ANSWER OF DEFENDANT
J.C. BRADFORD & CO.

Same Title

Defendant J.C. Bradford & Co., by its attorneys, Brown, Wood, Fuller, Caldwell & Ivey, answers the complaint herein as follows:

1. Denies each and every allegation of paragraph 1 of the complaint, except admits that this action purportedly arises under, and the jurisdiction of this Court is purportedly based upon, the statutes referred to in paragraph 1.

2. Denies each and every allegation of paragraph 2 of the complaint as to J.C. Bradford & Co., except admits that J.C. Bradford & Co., as agent for plaintiff, acquired for plaintiff's account and risk on January 14, 1972 a call option covering 100 shares of common stock of Cooper Tire & Rubber Co., said call option having an exercise price of $17.625 per share and an expiration date of July 24, 1972, for a consideration of $275.00, plus a handling charge of $3.75, or a total consideration of $278.75, and denies knowledge or information sufficient to form a belief with respect to the truth of the allegations of said paragraph

ANSWER OF DEFENDANT
J.C. BRADFORD & CO.

as to the other named defendants, except admits that plaintiff intends the term "options" as used in the complaint to have the meaning ascribed to it in paragraph 2.

3. Denies each and every allegation of paragraph 3 of the complaint, except admits that plaintiff purports to bring this action on behalf of himself and all others allegedly similarly situated who purchased call options from the defendants since November 29, 1971.

4. Responding to paragraph 4 of the complaint:

4(a) and (b). Denies each and every allegation of subparagraphs 4(a) and 4(b) of the complaint.

4(c) and (d). Denies knowledge or information sufficient to form a belief as to the truth of the allegations of subparagraphs 4(c) and 4(d) of the complaint, except denies the existence of any class properly maintainable under Rule 23 of the Federal Rules of Civil Procedure.

4(e), (f) and (g). Denies each and every allegation of subparagraphs 4(e), 4(f) and 4(g), inclusive, of the complaint.

5. Denies knowledge or information sufficient to form

a belief as to the truth of the allegations of paragraph 5 of the complaint.

6. Denies each and every allegation of paragraph 6 of the complaint as to J.C. Bradford & Co., except admits that J.C. Bradford & Co. is engaged in the business of, among other things, dealing in securities as broker and otherwise and that during the period of time referred to in the complaint J.C. Bradford & Co., as agent, occasionally acquired for the account and risk of certain of its customers call options written by others, and denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph as to the other named defendants.

7. Denies each and every allegation of the first sentence of paragraph 7 of the complaint as to J.C. Bradford & Co., and denies knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of said paragraph as to the other named defendants; and denies each and every allegation of the second sentence of paragraph 7 of the complaint, except admits that during the period of time referred to in the

complaint call options were sold and offered for sale to the public.

8. Denies each and every allegation of paragraph 8 of the complaint as to J.C. Bradford & Co., denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph as to the other named defendants, and denies the existence of any class properly maintainable under Rule 23 of the Federal Rules of Civil Procedure.

9. Denies each and every allegation of paragraph 9 of the complaint.

10. Denies each and every allegation of paragraph 10 of the complaint as to J.C. Bradford & Co., and denies knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph as to the other named defendants.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the complaint, except denies the existence of any class properly maintainable under Rule 23 of the Federal Rules of Civil Procedure.

12. Denies each and every allegation of paragraphs 12 and 13 of the complaint.

FIRST AFFIRMATIVE DEFENSE

13. The complaint fails to state a claim against defendant J.C. Bradford & Co. upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

14. The claims alleged in the complaint, in whole or in part, are barred by the applicable statute or statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

15. The claims alleged in the complaint, in whole or in part, are barred by plaintiff's laches.

FOURTH AFFIRMATIVE DEFENSE

16. Upon information and belief, prior to and after plaintiff's purchase of each of the call options which are the subject matter of this action, plaintiff knew or reasonably should have known that a registration statement for said call options had not been and would not be filed with the Securities and Exchange Commission under the Securities Act of 1933 and plaintiff is thereby estopped from asserting the claims alleged in the complaint.

FIFTH AFFIRMATIVE DEFENSE

17. To the extent that the complaint's allegations that any or all call options acquired by J.C. Bradford & Co. for the account and risk of various of its customers were "securities", as that term is used in the Securities Act of 1933, are proved, said call options, and any transactions by J.C. Bradford & Co. in connection with said call options, were and are exempted from the provisions of said Act.

SIXTH AFFIRMATIVE DEFENSE

18. Plaintiff failed to tender any option purchased by him from any defendant herein and is therefore barred from maintaining this action insofar as he seeks rescission in respect of his purchase of any such option.

WHEREFORE, defendant J.C. Bradford & Co. demands judgment be entered against plaintiff and for defendant, together with the costs and disbursements of this action, including counsel fees, and such other and further relief

ANSWER OF DEFENDANT
J.C. BRADFORD & CO.

to defendant as the Court may deem just and proper.

Dated: New York, New York
January 29, 1973

LYON, WOOD, FULLER, CALDWELL & IVEY

By Carle D. May
(A Member of the Firm)
Attorneys for Defendant J.C. Bradford
& Co.
One Liberty Plaza
New York, New York 10006
(212) 349-7500

ANSWER OF DEFENDANT
VOGEL-LORBER, INC.

Same Title

Each defendant named below, by its attorneys, Lorber, Vogel and Berger, answers the complaint as follows:

1. Denies each and every allegation of paragraph 1 of the complaint, except admits that the action purportedly arises under and jurisdiction is purportedly based upon the statutes referred to in paragraph 1.

2. Denies that plaintiff purchased call options from any defendant named below and denies knowledge or information sufficient to form a belief with respect to the truth of the allegations as to other defendants.

3. Denies each and every allegation of paragraph 3 of the complaint, except admits that plaintiff purports to bring this action on behalf of himself and all others similarly situated who purchased call options from the defendants since November 29, 1971.

ANSWER OF DEFENDANT
VOGEL-LORDER, INC.

4. Responding to paragraph 4 of the complaint:

4(a) and (b). Denies each and every allegation of subparagraphs 4(a) and 4(b) of the complaint.

4(c) and (d). Denies knowledge or information sufficient to form a belief as to the truth of the allegations of subparagraphs 4(c) and 4(d) of the complaint, except denies the existence of any class properly maintainable under Rule 23 of the Federal Rules of Civil Procedure.

4(e), (f) and (g). Denies each and every allegation of subparagraphs 4(e), 4(f) and 4(g), inclusive, of the complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the complaint, except admits that the standard Call option form copyrighted by the Put and Call Brokers and Dealers Association, Inc. provided that for a specified period of time the holder thereof had an option to purchase 100 shares of a designated security at a specified price per share which price was subject to adjustment under conditions specified on the face of the Call option.

6. Denies each and every allegation of paragraph 6 of the complaint except admits that each defendant is engaged in the business of buying and selling Put and Call Options.

7. Denies each and every allegation of the first sentence of paragraph 7 of the complaint except, with the exception of defendant Universal Options, Inc., which denies buying or selling Call options prior to 3 November 1972, admits that they engaged in the business of buying and selling Put and Call options during the period referred to; denies knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 7 of the complaint as to other named defendants; denies each and every allegation of the second sentence of paragraph 7 of the complaint except, with the exception of defendant Alvin V. Filer & Co., Inc., which denies offering to sell or selling Call options to the public, admits that Call options were offered for sale and sold to the public.

8. Denies knowledge or information sufficient to

form a belief as to the truth of the allegations of paragraph 8 of the complaint, except denies the existence of any class properly maintainable under Rule 23 of the Federal Rules of Civil Procedure and defendant Universal Options, Inc. denies that it sold any Call options prior to 3 November 1972.

9. Denies each and every allegation of paragraph 9 of the complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the complaint, except admits that during the period of time referred to in the complaint registration statements were not filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to the call options sold.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the complaint, except denies the existence of any class properly maintainable under Rule 23 of the Federal Rules of Civil Procedure.

12. Denies each and every allegation of paragraphs 12 and 13 of the complaint.

ANSWER OF DEFENDANT
VOGEL-LORBER, INC.

FIRST AFFIRMATIVE DEFENSE

13. The complaint fails to state a claim against defendants upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

14. The claims alleged in the complaint, in whole or in part, are barred by the applicable statute or statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

15. The claims alleged in the complaint, in whole or in part, are barred by plaintiff's laches.

FOURTH AFFIRMATIVE DEFENSE

16. Upon information and belief, prior to and after plaintiff's purchase of each of the call options which are the subject matter of this action, plaintiff knew or reasonably should have known that a registration statement for said call options had not been and would not be filed with the Securities and Exchange Commission under the Securities Act of 1933 and

plaintiff is thereby estopped from asserting the claims alleged in the complaint.

ANSWER OF DEFENDANT
VOGEL-LORBER, INC.

FIFTH AFFIRMATIVE DEFENSE

17. To the extent that the complaint's allegations that any or all call options written or sold by them were "securities", as that term is used in the Securities Act of 1933, are proved, said call options, and any transactions by defendants in connection with said call options, were and are exempted from the provisions of said Act.

WHEREFORE, defendants demand judgment be entered against plaintiff and for defendants, together with the costs and disbursements of this action, including counsel fees, and such other and further relief to defendants as the Court may deem just and proper.

Dated: New York, New York

January 24, 1973

LORBER, VOGEL & BERGER

By _____
(A Member of the Firm)

19 Rector Street
Suite 1905
New York, N. Y. 10006
(212) 248-4559
Attorneys for the following
named Defendants:

MOTION OF PLAINTIFF FOR CLASS
DETERMINATION DATED JUNE 21,1973

Same Title

S I R S :

PLEASE TAKE NOTICE that, on the annexed affidavit of IRVING BIZAR, sworn to June 20, 1973, the pleadings and prior proceedings herein, the undersigned will move this Court for an Order pursuant to Rule 23 F.R.C.P. and Local Rule 11A declaring the above action a class action, and for such other and further relief as may be just and proper.

Dated: June 21,1973.

DEMOV, MORRIS, LEVIN & SHEIN

By _____
A Member of the Firm
40 West 57 Street
New York, New York 10019

A. ARNOLD GERSHON
295 Madison Avenue
New York, New York

Attorneys for Plaintiffs

TO:

MOTION OF PLAINTIFF FOR CLASS
DETERMINATION DATED JUNE 21,1973

STATE OF NEW YORK)
: ssl:
COUNTY OF NEW YORK)

IRVING BIZAR, being duly sworn, deposes and says:

I am a member of the Bar of this Court and of the firm of DEMOV, MORRIS, LEVIN & SHEIN, co-counsel for the above named plaintiff. I am familiar with the facts and prior proceedings herein and make this affidavit in support of the annexed application for class determination, pursuant to Rule 23(b) FRCP.

Nature of the Action

This action was commenced by plaintiff as a stockholder's class action on or about November 29,1972. The complaint charges that the defendants issued, sold or offered to sell, participated in or were directly or indirectly engaged in the business of selling options or offering to sell options to purchase shares of stock or other securities. It is alleged that such sales

took place when no registration statement was filed or in effect as to such options and that such registration statement was required under Section 5(a) and (c) of the Securities Act of 1933, as amended.

The action is brought on behalf of all those who purchased options from the defendants since November 29,1971.

The above action was the first such stockholder action brought. Since the commencement of this action, three other stockholder actions have been brought involving the subject matter of this suit.

It is respectfully submitted that this action meets each of the requirements of Rule 23.

Joinder of All Members of the Class is Impracticable.

Rule 23 provides that class action can be had if "(1) The class is so numerous that joinder of all members is impracticable...."

There can be no dispute that the class is numerous.

In August 1961, the Securities and Exchange Commission issued a report on put and call options. That report found

that in the year 1960, the average number of "calls" traded weekly were 218 and that the average number of puts traded weekly was 168. By 1960, the total sales of puts and calls had grown to 1.12% of the total volume of trading on the New York Stock Exchange.

Since that time and currently, the volume has increased.

Thus, it can be fairly concluded that the class is numerous and joinder of all the members would be impracticable.

There are Questions of Law or Fact Common to the Class

Rule 23 further provides that a class action can be had if " . . ." (2) There are questions of law or fact common to the class . . . ." This requirement is met in the case at bar. The complaint charges that call options were sold and traded without a registration statement having been filed. Plaintiff alleges that a registration statement was required to be filed with respect to the call option.

The legal issue, as well as the factual questions, are

whether a registration statement was required to be filed for the call options and the quantum and method of damages. All of the members of the class are affected by these issues and all of them are common to the class.

It should be noted that actions for violations of the securities laws have usually and traditionally been declared class actions by the courts.

Plaintiff's Claims are Typical of the Class

Rule 23 further provides that a class action can be maintained only if " . . . (3) The claims . . . of the respecti parties are typical of the claims of the class . . . ."

Plaintiff meets this condition as well. He stands identical to all of the other members of the investing public who purchased call options in the period from November 29, 1971,

to November 29, 1972. Only one real issue is involved, i.e., whether there should have been filed registration statements with respect to the call options. If, as we claim, registration statements should have been filed, then all of the members of the class have been injured and should be recompensed accordingly. Plaintiff's suit thus represents the claims of all of the members of the class, and it is typical of those of the class.

Plaintiff will Fairly and Adequately Protect the Interests of the Class

Rule 23 also provides that a class action would be maintained only if " . . . (4) The representative parties will fairly and adequately protect the interests of the class."

Plaintiff also meets this requirement. He has, as demonstrated above, claims which are typical of the claims of the class. He has no interest antagonistic to or in conflict with those of the rest of the class.

Moreover, plaintiff has retained in the prosecution of this litigation, competent, qualified and experienced counsel. Judge Caffrey has said of my firm in the Revenue Properties

Litigation, formerly pending in the United States District Court, District of Massachusetts, MDL No. 32, that we were "qualified and competent" as lead counsel for the stockholder plaintiffs. Judge Tyler, in this Court, in Lerman v. Tenney, et al, 67 Civ. 4527 has again complimented our firm in this field. We have also been appointed lead or general counsel in various other stockholder litigations in this Court.

Mr. Gershon, the other co-counsel for the plaintiff in this action, has had long experience in the stockholder field.

Finally, there has been no collusion in the commencement of this suit.

Plaintiff's claims are meritorious.

There is therefore, every reason, why this action should be a class action. The questions of fact and law, common to all of the members of the class, predominate over any questions affecting individual members.

The class action is, moreover, a superior method to any other available for the fair and efficient adjudication of the controversy presented here. To require individual

shareholders to bring separate litigations would impose a staggering burden for the courts and the parties. It would involve races of diligence between conflicting suits, creating the risk of inconsistent or varying adjudications with untold complications for all.

Some individual purchasers of options affected may also have a small amount involved based upon his or her individual purchase. The expense of such a suit for the small purchaser would deter litigation and leave him without redress. To require intervention in pending suits would impose increasing numbers and burdens upon the Court. In short, a class action is the only effective way of dealing with this controversy.

For all the foregoing reasons, it is respectfully requested that this action be declared a class suit.

Sworn to before me this

20 day of June, 1973.

EDWARD B. HOWES
Notary Public, State of New York
No. 41-1250364 Queens County
Certificate filed in New York County
Term Expires March 30, 19 74

DEFENDANTS' INTERROGATORIES TO
PLAINTIFF-FIRST SET

Same Title

The undersigned defendants hereby request that plaintiff Merle W. Leonard answer the interrogatories set forth hereinafter separately and fully in writing under oath in accordance with Rule 33 of the Federal Rules of Civil Procedure and with the definitions set forth herein.

These interrogatories are continuing interrogatories. If at any time after service of the answers hereto and prior to the trial of this action, plaintiff obtains additional information responsive to any of these interrogatories, the disclosure of which may be required hereby pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, plaintiff shall within 30 days and in no event later than 5 days before trial, serve supplemental sworn answers setting forth such additional information.

INTERROGATORIES

1. State plaintiff's full name, any other names or pseudonyms plaintiff has ever used, and plaintiff's date of birth.

DEFENDANTS' INTERROGATORIES TO
PLAINTIFF-FIRST SET

2. State plaintiff's educational background or history, including but without limitation the following:

(a) whether plaintiff graduated from high school and, if the answer thereto is affirmative, identify the high school from which plaintiff graduated and state the year of plaintiff's graduation therefrom;

(b) whether plaintiff attended any college, university or other institution of higher education and, if the answer thereto is affirmative:

(i) identify each such college, university or institution;

(ii) state separately the year or years in which plaintiff attended each such college, niversity or institution, and

(iii) state separately whether plaintiff g uated or obtained a degree from each such co ge, university or institution and state sep tely for each such college, university or insti tion the year plaintiff graduated or obtain such degree(s) and the degree(s) obtained.

3. State with respect to the period from the date of plaintiff's twenty-first birthday to the date of your

answers hereto:

(a) each occupation in which plaintiff was or is engaged, and with respect to each year(s), or portion of the year, during which plaintiff was engaged in or pursued such occupation, the position(s) or title(s) plaintiff held, if any; and the specific duties or the nature of the work performed in such position;

(b) with respect to each occupation, identified in answer to subpart 3(a) hereof, identify the firm or business or other entity with which plaintiff was employed or associated and state the full address of plaintiff's principal place(s) of business and residence during such occupation;

(c) with respect to each occupation identified in answer to subpart 3(a) hereof, state separately for each calendar year the compensation derived by plaintiff from such occupation or position, including but without limitation the salary, and any stock option or award or bonus, earned by or given to plaintiff.

4. Identify with respect to the period from January 1, 1967 to the date of your answers hereto any and

all persons from or through whom you purchased, or to or through whom you sold, any shares of stock, put or call option, or security and with respect to each such person separately state:

(a) the identity of each director, officer, partner, associate, employee or agent of such person with whom you dealt or had any discussion, conversation, or other communication, written or oral, concerning or in connection with each such purchase or sale;

(b) the identity of each stock, put or call option, or security purchased or sold by you, including but without limitation:

(i) the date of each such purchase or sale;

(ii) the number of shares of stock or number of put or call option contracts involved in each such purchase or sale; and

(iii) the price per share you paid or received with respect to each such purchase or sale of stock or security, or the premium paid or received by you with respect to each such purchase or sale of a put or call option.

5. Identify with respect to the period from

November 29, 1971 to the date of your answers hereto each call option purchased by you and with respect to each such call option separately state:

(a) the identity of the person from or through which you purchased each call option;

(b) the identity of each call option which is or was still in effect or has or had not expired:

(i) as of the date of your answers hereto;

(ii) as of the date of the commencement of this action;

(iii) as of the date upon which you first had any discussion or communicated with any attorney or any other person concerning the possibility of instituting this action or any other legal action based, in whole or in part, upon allegations identical or similar to those asserted in the complaint in this action; and

(iv) as of the date when you were first advised or became aware that a registration statement with respect to each or any of said

call options had not been filed with the Securities and Exchange Commission under the Securities Act of 1933;

(c) the identity of each such call option which you exercised or resold and with respect thereto separately state:

(i) the date(s) upon which you exercised or sold said call option;

(ii) the identity of the person through or to whom you exercised or sold said call option; and

(iii) whether you made a profit or sustained a loss, and the dollar amount thereof, with respect to each call option which you exercised or sold;

(d) whether prior to the expiration date of said call option you could have realized a profit or realized or recouped all or a portion of the premium paid therefor if you had exercised or resold said call option;

(e) the identity of the writer of each of the call options identified in your answer to this interrogatory; and

(f) the identity of the person who endorsed each of the call options identified in your answer to this interrogatory.

6. With respect to each of the call options identified in your answer to Interrogatory No. 5 hereof, separately state:

(a) whether prior to your purchase of said call option you owned or had any beneficial interest in, or any option, right or obligation, of any kind or type whatsoever, with respect to, the stock, of whatever class or type, of the corporation whose stock was the subject of said call option;

(b) if your answer to subpart 6(a) hereof is affirmative with respect to any call option, separately state with respect to each such call option:

(i) the nature of, and the date or dates upon which you acquired, said interest, option, right or obligation;

(ii) the identity of the issuer, the class or type, and the number of shares, of said stock with respect to which you had such an interest,

option, right or obligation; and

(iii) whether prior to the expiration date of said call option the nature of said pre-existing interest, option, right or obligation was altered or modified, or disposed of by you, and, if so, state the nature of said alteration or modification or disposition and the date or dates upon which it occurred;

(c) whether subsequent to your purchase of said call option you owned or had any beneficial interest in, or any other option, or right or obligation, of any kind or type whatsoever, with respect to, the stock, of whatever class or type, of the corporation whose stock was the subject of said call option;

(d) if your answer to subpart 6(c) hereof is affirmative with respect to any call option, separately state with respect to each such call option the information requested in subparts 6(b)(i) through (iii), inclusive, hereof.

7. With respect to each of the call options identified in your answer to Interrogatory No. 5 hereof,

separately state:

(a) whether prior to your purchase of said call option you read or had available to you, in whole or in part, any annual report, prospectus or any other financial statement of or concerning the corporation whose stock was the subject of said call option;

(b) if your answer to subpart 7(a) hereof is affirmative with respect to any call option, separately state with respect to each such call option:

(i) the date or dates upon which you read or had available to you, in whole or in part, said annual report, prospectus or financial statement;

(ii) the identity of said annual report, prospectus or financial statement; and

(iii) the identity of the person or persons from whom you obtained said annual report, prospectus or financial statement;

(c) whether prior to your purchase of said call option you discussed, conversed or communicated, orally or in writing, with any person concerning:

(i) the financial condition, performance or prospects of the corporation whose stock was

the subject of said call option;

(ii) the financial condition of the person who wrote or would write said call option; or

(ii) each document which constitutes, refers or relates, in whole or in part, to said solicitation or recommendation; and

(iii) each oral discussion, conversation or communication which constituted, referred or related, in whole or in part, to said solicitation or recommendation.

9. With respect to each of the call options identified in your answers to Interrogatory No. 5 hereof, separately state:

(a) the date upon which, and the circumstances under or method or means by which, you first became aware or were advised that said call option was not or would not be registered under the Securities Act of 1933;

(b) the identity of each person who advised or discussed with you that said call option was not or would not be registered under the Securities Act of 1933 and with respect to each such person separately identify:

(i) each document which refers or

relates, in whole or in part, to such advice or to your discussion, conversation or communication with said person; and

(ii) each oral communication which constituted, referred or related to, in whole or in part, said advice or discussion.

10. Identify each person who asked you to or suggested or advised that you become a plaintiff in this action and identify each oral communication and each document containing, relating or referring, in whole or in part, to each such request, suggestion or advice.

11. Identify each person whom you asked to or suggested or advised become a plaintiff in this action, or become a plaintiff in a separate action asserting claims similar or identical to those set forth in the complaint in this action, and identify each oral communication and each document containing, relating or referring, in whole or in part, to each such request, suggestion or advice.

12. With respect to each call option identified in your answers in Interrogatory No. 5 hereof, identify the person, or persons, who allegedly was the "issuer" of said call option.

13. With respect to the allegations of paragraph 9 of the complaint in this action, state whether you allege or contend that each call option contract is a separate "security" within the meaning of Section 2(1) of the Securities Act of 1933.

14. With respect to the allegations of paragraph 9 of the complaint in this action, state whether you allege or contend that each endorsement of each call option contract is a separate "security" within the meaning of Section 2(1) of the Securities Act of 1933.

15. If your answers to Interrogatories Nos. 13 and 14 hereof are negative, state what you allege or contend was or constituted the "security" referred to in paragraph 9 of the complaint which was allegedly sold or offered for sale by each defendant.

16. With respect to the allegations of paragraph 10 of the complaint, state the date upon which you first became aware, or had knowledge or information, that a registration statement was not or would not be filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to call options sold or offered for sale by any or all of the defendants and identify the

source of said knowledge or information.

DEFINITIONS

As used herein, the term:

(a) "You" or "Your" refers to and includes the individual plaintiff Merle W. Leonard as well as his agents, attorneys and other persons acting on his behalf.

(b) "Person" refers to and includes natural persons, corporations, partnerships, business associations, proprietorships, organizations and groups.

(c) "Document" refers to and includes the original and all drafts, and any and all copies which are not identical to the original and/or draft in every respect (regardless of origin), of any printed, written, recorded, transcribed, punched, taped, filmed, photographed or graphic matter in your possession or custody or subject to your control, whether sent or received or neither, however produced or reproduced, and both sides thereof, including but not limited to any correspondence, memoranda, reports, call option contracts, prospectuses, confirmations, financial reports, notes, letters, telegrams, messages (including reports, notes and memoranda of or concerning telephone

conversations and conferences), studies, analyses, comparisons, books, magazines, newspapers, booklets, circulars, bulletins, notices, instructions, or any paper or communication.

(d) "Identify" or "state the identity of" means:

(1) When referring to a natural person, state his or her full name, age, present or last known business and residence address and business affiliation and position.

(2) When used with reference to any entity other than a natural person, state:

(i) its full name;

(ii) the address of its principal place of business;

(iii) if it is a corporation, the jurisdiction under the laws of which it has been organized and the date of such organization; and

(iv) in the case of an entity other than a corporation, the name of each person with an ownership interest therein.

(3) When used with reference to a document, state the type of document (e.g., letter, contract, memo-

randum), its date, its author(s), addressee(s) and, if different, recipient(s), general subject matter, present location, custodian and the number of pages thereof. If any document was, but is no longer in your possession or subject to your control, state what disposition was made of it. Documents to be identified shall include documents with respect to which a privilege is or may be claimed.

(4) When used with reference to an oral communication, state the date upon which it occurred, identify each person who was present when it was made, state its substance and identify each document which refers or relates, in whole or in part, to said oral communication.

(5) When used with reference to any put or call option, state:

(i) the date of the option contract;

(ii) the expiration date of the option contract;

(iii) the amount of the premium paid for the option contract;

(iv) the contract or exercise price specified in the option contract;

(v) the designated stock or secur-

ity to which the option contract related, including the name of the issuer of said stock or security and the class or type of stock or security;

(vi) whether the option contract was on the standard call option form copyrighted by the Put and Call Brokers and Dealers Association.

(e) "Or" shall be taken to mean "and/or".

Dated: New York, New York
January 29, 1972

SULLIVAN & CROMWELL

By MARVIN SCHWARTZ

(A Member of the Firm)
Attorneys for Defendants
Dean Witter & Co., Inc.,
Goldman, Sachs & Co., and
Reynolds Securities, Inc.,
48 Wall Street,
New York, New York 10005.
(212) HAnover 2-8100

PLAINTIFF'S ANSWERS AND OBJECTIONS
TO DEFENDANTS' INTERROGATORIES,
DATED APRIL 13, 1973

Same Title

PLAINTIFF FOR HIS ANSWERS AND OBJECTIONS
TO THE INTERROGATORIES OF DEFENDANTS
DATED JANUARY 29, 1972:

1. "State plaintiff's full name, any other names or pseudonyms plaintiff has ever used, and plaintiff's date of birth."

A. Merle Wayne Leonard, 33 years of age.

2. "State plaintiff's educational background or history, including but without limitation the following:

(a) whether plaintiff graduated from high school and, if the answer thereto is affirmative, identify the high school from which plaintiff graduated and state the year of plaintiff's graduation therefrom;

(b) whether plaintiff attended any college, university or other institution of higher education and, if the answer thereto is affirmative:

(i) identify each such college, university or institution;

(ii) state separately the year or years in which plaintiff attended each such college, university or institution, and

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(iii) state separately whether plaintiff graduated or obtained a degree from each such college, university or institution and state separately for each such college, university or institution the year plaintiff graduated or obtained such degree(s) and the degree(s) obtained."

A. Chamblee High School, Chamblee, Georgia, graduate

via GED in United States Navy in 1960, attended

Massey Business College (non-credit) Atlanta, Geor

January- October, 1961.

3. "State with respect to the period from the da of plaintiff's twenty-first birthday to the d of your answers hereto:

(a) each occupation in which plaintiff was o is engaged, and with respect to each yea or portion of the year, during which plaintiff was engaged in or pursued such occupation, the position(s) or title(s) plaintiff held, if any; and the specific duties or the nature of the work performe in such position;

(b) with respect to each occupation, identifi in answer to subpart 3(a) hereof, identif the firm or business or other entity with which plaintiff was employed or associate and state the full address of plaintiff's principal place(s) of business and reside during such occupation;

(c) with respect to each occupation identifie in answer to subpart 3(a) hereof, state separately for each calendar year the

compensation derived by plaintiff from such occupation or position, including but without limitation the salary, and any option or award or bonus, earned by or given to plaintiff."

A & B Worked for Insurance Systems,Inc., 88 Walton Street, Atlanta, Georgia, as a tabulator operator - November 1961 - April 1962; J.C. Penney Regional Accounting Center, 151 Ponce de Leon, Atlanta, Georgia, as a tabulator operator and computer operator - April, 1962 through October, 1965; U.S.S. Agriculture Chemicals, 30 Pryor Street, Atlanta, Georgia, as a computer operator, shift supervisor on computers; supervisor of computer operators, supervisor of data production control and distribution. October 1965 to date.

Resided at: December 1960-February 1962, One Collier Rd. - Apt. 12, Atlanta, Georgia; February 1962 to December 1962, West Roxboro Rd., Atlanta, Georgia, December 1962-December 1965, 3737 Peachtree Rd., Apt.C Atlanta, Georgia; December 1965 to July 1972, 4160 N.

Shallowford Rd., Chamblee, Georgia; July 1972 to October 1972, One Collier Rd.,Atlanta,Georgia, October 1972 to date 160 Rue Fontaine, Decatur, Georgia.

C. Cannot answer for all years prior to 1968 since records are no longer available to plaintiff. In 196 earned $8,490; in 1969, earned $8,988; in 1970,earne $9,952; in 1971, earned $10,636; and in 1972,earned $11,770.

4. "Identify with respect to the period from January 1, 1967 to the date of your answers hereto any and all persons from or through whom you purchased, or to or through whom you sold, any shares of stock, put or call option, or security and with respect to each such person separately state:

(a) The identity of each director, officer, partner, associate, employee or agent of such person with whom you dealt or had any discussion, conversation, or other communication, written or oral, concerning or in connection with each such purchase or sale;

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(b) the identity of each stock, put or call option, or security purchased or sold by you, including but without limitation;

(i) the date of each such purchase or sale;

(ii) the number of shares of stock or number of put or call option contracts involved in each such purchase or sale; and

(iii) the price per share you paid or received with respect to each such purchase or sale of stock or security or the premium paid or received by you with respect to each such purchase of sale of a put or call option.

A. (a) Robert McConnell of Courts & Co.;

Flip Styles of Blair & Co.;

Benning Grice of Goodbody & Co. Don't remember anything else.

(b)

Date	Name of Security (Put or Call)	Purchase or Sale	Price	No. of Shares	Broker
11/20/67	Armour & Co. stock	P	32-1/2	15	Courts & Co.
12/5/67	" " "	S	36-5/8	15	" "
12/7/67	Chock F.N.	P	24-1/8	21	" "
6/14/68	" " "	S	22-1/8	21	" "
10/2/68	Shareholders Capital	P	20	25	Blair & Co.
10/11/68	" " "	S	28-3/4	25	" "
9/6/68	Mutual Franchise Corp.	P	10	25	" "
10/14/68	" " "	S	11-3/4	25	" "
10/11/68	Hasbro Industries Inc.	P	15	10	" "
10/31/68	" " "	S	16-7/8	10	" "
10/18/68	Computer Communication Inc.	P	12-1/2	25	" "

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10/7/68	" " "	S	34	25		
8/30/68	Medic Home Developers	P	14-1/4	25	" - "	
11/15/68	" " "	S	18-1/2	25	" "	
9/12/68	Calif.Health Care Inc.	P	12-1/2	25	Goodbody &Co	
9/26/68	" " "	S	16-5/8	25	"	
8/8/68	E.T.Barwick Ind.	P	16	7	"	
10/4/68	" "	S	17-1/2	7	"	
10/8/68	Clinton Mdsing Inc.	P	14	25	"	

11/7/68	Clinton Mdsing Inc.	S	14	25	Goodbody &C	
10.22/68	Western Gem Corp.	P	21	25	" "	
11/14/68	" "	S	22-3/4	25	" "	
11/14/68	Light Oiler Inc.	S	24-1/2	25	" "	
10/22/68	" "	P	23-1/2	25	" "	
10/24/68	Jaclin Inc.	P	14	35	" "	
12/13/68	"	S	15-3/4	35	" "	
12/3/68	Dorins Inc.	P	17	50	" "	
12/5/68	"	S	17-1/2	50	" "	
6/13/68	Fuji Photo	P	1-1/2	100	" "	
12/19/68	" "	S	.80	100	" "	
5/31/68	Botany Ind.Inc.	P	14-1/2	31	Courts & Co.	
8/15/68	" " "	S	15-3/8	31	" "	
7/30/68	Genl.Computer Svce.Inc.	P	5	75		
8/1/68	" "	S	9-1/2	75		
9/4/68	Steelmet.Inc.	P	8	25	" "	
9/5/68	" "	S	12-/2	25		
9/5/68	Sequoiah Ind. Inc.	P	22	25	" "	
9/6/68	" "	S	28-3/4	25	" "	
8/16/68	Sixty Minute Systems, Inc.	P	25	25	" "	
9/24/68	" " " "	S	21	25	" "	
6/27/68	Diebold Computer Co.	P	24-1/2	10	" "	
10/7/68	" " "	S	25-1/2	10	" "	

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12/30/68	Coto Stores Inc.	P	.19	50	"
1/9/69	" "	S	.18	50	"
1/8/69	Pioneer Plastic Corp.	P	16-7/8	100	"
1/17/69	" "	S	18-1/2	100	
1/22/69	Consolidated Refining Co	P	16-1/2	50	"
1/24/69	" "	S	17-3/4	50	"
12/6/68	Robintech Inc.	P	14-5/8	100	"
3/19/69	" "	S	10	100	"
3/18/69	Suave Shoe Corp.	P	9-3/4	100	"
3/20/69	"	S	10.325	100	"
3/7/69	Heritage Nursing Center Inc.	P	9	25	"
4/1/69	" "	S	10.3/8	25	"
3/21/69	Dynamics Corp.Amer.	P	19-1/2	40	"
4/16/69	" "	S	18-5/8	40	"
4/28/69	Canaveral Intl.	P	15-1/8	60	"
5/9/69	" "	S	18-1/4	60	"
4/10/69	Huntley of York Ltd.	P	19	50	"
4/28/69	" "	S	17.750	50	"
5/21/69	Madison Sq.Garden	P	8 3/4	50	"
8/20/69	" "	S	7-1/8	50	"
5/27/69	Floyd Enterprises	P	19		"
8/13/69	" "	S	11.068	50	"
9/4/69	Vintage Enterprises	P	12-3/4	100	"
10/2/69	" "	S	14.904	100	"
10/24/68	S.M.C. Investment	P	17.50	25	"
10/2/69	" "	S	12-5/8	25	"
10/2/69	Fielos Plast/Chem.	P	7-1/2	200	"
10/15/69	" "	S	8-1/4	200	"
5/9/69	Newhall Land & Farming	P	43	10	"
10/23/69	" "	S	45-1/2	10	"
9/25/69	Crest Foam Corp.		10	100	"
10/2/69	" "	S	8-1/2	100	"
11/14/69	Aquitaine Co.Coa. Ltd. AQC	P	18-5/8	80	"
12/8/69	" "	S	17-3/4	80	"

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12/23/68	Alberts Inc.	P	14-3/4	50	Blair
2/3/69	"	S	14-1/2	50	" "
2/18/69	AVM Corp.	P	19	25	" "
5/19/69	" "	S	15-1/2	25	" "
12/17/68	Savings Financial Corp.	P	12-3/4	50	Courts
12/30/68	" "	S	14	50	
11/26/68	Scottys Home Build Supply	P	7-1/2	25	"
1/9/69	" "	S	13.295	25	"

9/19/68	Gulf Life Hld.Corp.	P	20-1/2	15	
10/7/68	" " "	S	28	15	" "
10/1/68	SL Cap Corp.	P	20	25	" "
10/11/68	" " "	S	28-1/2	25	" "
10/7/68	Bengent Cons.Mines	P	13-3/8	50	" "
10/24/68	" "	S	13-1/8	50	" "
10/22/68	Int.Aluminum Ltd.	P	21	30	" "
10/24/68	"	S	26-1/2	30	" "
10/28/68	" "	S	17	25	" "
10/24/68	Flowers Ind.Inc. CPA	P	12-1/2	50	" "
11/25/68	" "	S	17.255	50	" "
11/19/68	Computer Property Corp.	P	16-1/2	25	" "
12/24/68	" " "	S	13-1/2	25	" "
6/11/68	Fuji Photo	P	1.55	100	Francis I.
12/10/68	" "	S	.88	100	du Pont
12/20/68	E.W.Twistle Co.	P	11	100	Goodbody.C
12/31/68	" "	S	13-1/4	100	" "
12/19/68	Kaysam Corp.of Amer.	P	11-1/4	25	" "
1/23/69	" "	S	8-1/2	25	" "
11/21/68	Simco Stores Inc.	P	10-3/4	100	" "
2/6/69	" "	S	10-3/8	100	" "
1/14/69	Cable Com.General Inc.	P	15.	25	" "
4/18/69	" "	S	11-1/2	25	" "
2/18/69	Edmos.Products Corp.	B	15	100	" "
5/21/69	" "	S	12-1/	100	" "

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10/16/69	C.N.D. Homestead Oils	P	13-1/4	100	"
10/23/69	" "	S	14-1/8	100	"
10/31/69	Trans-Beacon Corp.	P	7	100	"
11/06/69	" "	S	7-1/8	100	"
10/31/69	Madison Sq. Gardens	P	7	100	"
11/06/69	" "	S	7	100	"
11/5/69	Elixir Ind.Inc.	P	17-1/4	50	"
11/5/69	" "	S	22	50	"
6/16/70	Canadian Gricol Ltd.	P	7	100	Reynolds &
6/18/	" "	S	7	100	" "
10/27/10	Inforex Inc.	P	30-1/4	30	"
10/27/70	" "	S	30-1/4	30	"
2/27/68	Supervised Inv.Grw. Stk Fund	P	6.96	10	"
3/06/68	" " "	P	6.49	10	"
1/09/69	" " "	P	8.58	20	"
4/21/70	" " "	S	6.38	40	"
12/8/69	Canadian Gricol Ltd.	P	10-1/8	100	"
7/28/70	" "	S	7-1/4	100	
2/09/70	Struthers Wells P.(Call-exp. 8/17/70-7-1/8)		200	100	"
8/13/70	Inforex Inc.	P	20-1/8	30	"
8/25/70	"	S	23-5/8	30	"
7/29/70	"	P	22-3/4	30	"
10/12/70	"	S	30-1/4	30	"
8/14/70	Morse Electro Prd.	P	9-1/8	100	"
8/25/70	" "	S	10-3/4	100	"
8/31/70	" "	P	9-1/4	100	"
9/18/70	Morse Electro Prod.	S	10-1/2	100	"
9/23/70	GRT Amer.Reserve Cap.	P	19-1/4	50	"
10/30/70	" "	S	21-7/8	50	"
6/7/71	Duplane Corp. (Call) (Exp.10-71 33-3/4)	P.	330.00	100	DuPont
6/10/71	Atlantic Richfield (Call) (Exp.7/15/71 71-1/4	P.	380.00	100	"
6/3/71	Unul Oil PRODUcts (Call) (Exp.12/13/71 22-7/8	P.	330.00	100	"

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8/21/71	Beverage Canners	P	12-1/2	100	J.C.Bradfo
9/14/71	" "	S	13-7/8	100	"
12/23/71	Inforex Inc.	S	26-3/4	50	"
9/23/71	"	P	22-1/2	50	"
11/18/70	Duplan Corp. (Call) (Exp. 5/28/71 -25-1/4)		430.00	100	Reynolds
5/12/71	" " (Exec. Call)	P.	25-1/4	100	"
4/22/71	" " (Short)	S	36-1/2	100	"
1/22/71	Graham Magnetics	P	14	35	"
4/20/71	"	S	31-3/8	35	"
5/5/71	Nardis of Dallas	S	15-7/8	40	
3/19/71	" "	P	15-3/4	40	"
11/2/70	Canaveral Intl.Corp.	P	5	200	"
2/9/71	" "	S	5-1/4	100	"
11/2/70	D.P.A.Inc.	P	4-1/2	100	"
1/22/71	" "	S	5-3/8	100	
8/10/71	Rath Packing	P.	14-1/8	100	Reynolds
8/12/71	"	S	16-1/4		
6/4/71	" " (Call) (Exp. 9/7/71 - $17.)	P	$278.75	100	"
8/16/71	" "	P	17-1/8	100	
8/16/71	" "	S	17-7/8	100	
10/24/68	S.M.C.Investment Corp	P	17-1/2	25	Goodbody
2/5/71	" "	S	10	25	Reynolds
5/19/69	Susquehanna	P	22-1/8	20	Blair & Co.
2/16/71	"	S	9	20	Reynolds
1/14/72	Graham Mag.	P	16-7/8	50	J.C.Bradford
2/3/72	" "	S	20-7/8	50	"
12/28/71	S.M.D. Ind.Inc.	P	5-1/2	100	"
2/9/72	" "	S	7-1/2	100	"
1/3/72	Micro Biological Research	P	.12¢	1000	Smith & Medford
4/17/72	" "	S	.30¢	1000	J.C.Bradford
2/11/72	4 Spectra Inc.	P	.54¢	1000	Smith &Bedford
5/30/72	" "	S	.53¢	1000	" "
10/4/71	Hickory Furniture	P	12-1/2	50	Dupont
12/30/71	" "	S	13-3/8	50	"
10/16/70	Modular Dynamics	P	7.50	50	Thomson McKinnon

2/11/71	" "	P	2-3/4	50	" "
6/16/72	" "	S	1-1/4	100	J.C.Bradford
10/04/71	Univ. Oil Prod. (Call) (Exp. 4-11/72 237.50)	P	$237.50	100	Reynolds
1/20/72	Copper Tire (Call) (Exp.7-24-72 17-3/8)	P	$278.75	100	J.C.Bradford
6/13/68	Cubic Corp.	P	39-1/2	5	Goodbody
3/3/72	Dero Inc.	P	8	100	J.C.Bradford
3/3/72	Kenwin Shops	P	13-3/4	100	"
3/7/72	" "	P	13-3/4	100	"
11/15/72	Ormont Drugs & Chem.	P	12	100	"
11/16/72	Recognition Equip,Inc.	P	10-1/2	200	"

5. Identify with respect to the period from November 29, 1971 to the date of your answers hereto, each call option purchased by you and with respect to each such call option separately state:

(a) the identity of the person from or through which you purchased each call option;

(b) the identity of each call option which is or was still in effect or has or had not expired;

(i) as of the date of your answers hereto;

(ii) as of the date of the commencement of this action;

(iii) as of the date upon which you first had any discussion or communicated with any attorney or any other person concerning the possibility of

instituting this action or any other legal action based, in whole or in part, upon allegations - identical or similar to those asserted in the complaint in this action; and

(iv) as of the date when you were first advised or became aware that a registration statement with respect to each or any of said call options had not been filed with the Securities and Exchange Commission under the Securities Act of 1933;

(c) The identity of each such call option which you exercised or resold and with respect thereto separately state:

(i) the date(s) upon which you exercized or sold said call option;

(ii) the identity of the person through or to whom you exercised or sold said call option; and

(iii) whether you made a profit or sustained a loss, and the dollar amount thereof, with respect to each call option which you exercised or sold;

(d) whether prior to the expiration date of said call option you could have realized a profit or realized or recouped all or a portion of the premium paid therefor, if you had exercised or resold said call option;

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(e) the identity of the writer of each of the call options identified in your answer to this interrogatory; and

(f) the identity of the person who endorsed each of the call options identified in your answer to this interrogatory.

A. (a) (b) and (c) See answer to paragraph 4 above. Anybody else in the chain of sale is unknown. Plaintiff hopes to obtain said names in discovery.

(d) Objected to upon the grounds that it calls for information which is irrelevant to the issues in this case and for legal and economic conclusions beyond plaintiff's power to supply them.

(e) and (f) Do not know the identity of the writer or the endorser because the documents evidencing the options are not in plaintiff's possession but are in defendants' possession.

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6. With respect to each of the call options identified in your answer to Interrogatory No. 5 hereof, separately state:

(a) whether prior to your purchase of said call option you owned or had any beneficial interest in, or any option right or obligation, of any kind or type whatsoever, with respect to, the stock of whatever class or type, of the corporation whose stock was the subject of said call option;

(b) if your answer to subpart 6(a) hereof is affirmative with respect to any call option, separately state with respect to each such call option:

(i) the nature of, and the date or dates upon which you acquired, said interest, option right or obligation;

(ii) the identity of the issuer, the class or type, and the number of shares, of said stock with respect to which you have such an interest, option, right or obligation; and

(iii) whether prior to the expiration date of said call option the nature of said pre-existing interest, option, right or obligations was altered or modified, or disposed of by you, and if so, state the nature of said alteration or modification or disposition and the date or dates upon which it occurred.

(c) whether subsequent to your purchase of said call option you owned or had any beneficial

interest in, or any other option, or right of obligation, of any kind or type whatsoever, with respect to, the stock, of whatever class or type, of the corporation whose stock was the subject of said call option;

(d) If your answer to subpart 6(c) hereof is affirmative with respect to any call option, separately state with respect to each such call option the information requested to subparts 6(b) (i) through (iii), inclusive hereof.

A. See answer to paragraph 4.

7. With respect to each of the call options identified in your answer to interrogatory No. 5 hereof, separate state:

(a) whether prior to your purchase of said call option you read or had available to you, in whole or in part, any annual report, prospectus or any other financial statement of or concerning the corporation whose stock was the subject of said call option;

(b) if your answer to subpart 7(a) hereof is affirmative with respect to any call option, separately state with respect to such call option;

(i) the date or dates upon which you read or had available to you, in whole or in part, said annual report, prospectus or financial statement;

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(ii) the identity of said annual report, prospectus or financial statement; and

(iii) the identity of the person or persons from whom you obtain said annual report, prospectus or financial statement;

(c) whether prior to your purchase of said call option you discussed, conversed or communicated, orally or in writing, with any person concerning:

(i) the financial condition, performance or prospects of the corporation whose stock was the subject of said call option;

(ii) the financial condition of the person who wrote or would write said call option; or

(iii) each document, which constitutes, refers or relates, in whole or in part, to said solicitation or recommendation; and

(iv) each oral discussion, conversation or communication which constituted, referred or related, in whole or in part, to said solicitation or recommendation.

A. (a) and (c) Objected to on the grounds that it calls for information

irrelevant to the issues herein

and contains conclusions of law as

to which plaintiff should not answer

(b) Not applicable.

9. With respect to each of the call option identified in your answers to Interrogatory No. 5 hereof, separately state:

(a) the date upon which, and the circumstances under or method or means by which, you first became aware or were advised that said call option was not or would not be registered under the Securities Act of 1933;

(b) the identity of each person who advised or discussed with you that said call option was not or would not be registered under the Securities Act of 1933 and with respect to each such person separately identify:

(i) each document which refers or relates, in whole or in part, to such advice or to your discussion, conversation or communication with said person; and

(ii) each oral communication which constituted, referred or related to, in whole or in part, said advice or discussion.

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A. (a) and (b) November,1972. Everything else is objected to on the grounds that it calls for confidential communications between attorney and client.

10. Identify each person who asked you to or suggested or advised that you become a plaintiff in this action and identify each oral communication and each document containing, relating or referring, in whole or in part, to each such request, suggestion or advice.

A. Objected to on the grounds that it calls for communication between attorney and client.

11. Identify each person whom you asked to or suggested or advised become a plaintiff in this action, or become a plaintiff in a separate action asserting claims similar or identical to those set forth in the complaint in this action, and identify each oral communication and each document containing, relating to or referring, in whole or in part, to each such request, suggestion or advice.

A. No one.

12. With respect to each call option identified in your answers in Interrogatory No. 5 hereof, identify the person, or persons, who allegedly was the "issuer" of said call option.

A. Objected to because the answer calls for a conclusion of law. Plaintiff contends that the defendants participated either in the issuing and/or the selling of the options.

13. With respect to the allegations of paragraph 9 of the complaint in this action, state whether you allege or contend that each call option contract is a separate "security" within the meaning of Section 2(1) of the Securities Act of 1933

A. Plaintiff contends that a call option is a security wthin the meaning of Section 2(1) of the Securities Act of 1933.

14. With respect to the allegations of paragraph 9 of the complaint in this action, state whether you allege or contend that each endorsement of each call option contract is a separate "security" within the meaning of Section 2(1) of the Securities Act of 1933.

A. Plaintiff contends that an endorsement of a call option is a security within the meaning of Section 2(1)of the Securities Act of 1933 and that the endorser of a call option participates in the issuance and sale thereof.

PLAINTIFF'S ANSWERS AND OBJECTIONS
TO DEFENDANTS' INTERROGATORIES
DATED APRIL 13, 1973

15. If your answers to Interrogatories Nos. 13 and 14 hereof are negative, state what you allege or contend was or constituted the "security" referred to in paragraph 9 of the complaint which was allegedly sold or offered for sale by each defendant.

A. Not applicable.

16. With respect to the allegations of paragraph 10 of the complaint, state the date upon which you first became aware, or had knowledge or information, that a registration statement was not or would not be filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to call options sold or offered for sale by any or all of the defendants and identify the source of said knowledge or information.

A. November 1972; objects to supplying source of said knowledge or information upon the ground that it violates the attorney-client privilege.

Dated: April 13, 1973.

DEFENDANTS' INTERROGATORIES TO
PLAINTIFF-- SECOND SET

Same Title

Defendants hereby propound and serve upon plaintiff Merle W. Leonard written interrogatories to be answered separately and fully under oath, within thirty (30) days and in accordance with Rule 33 of the Federal Rules of Civil Procedure and hereby request that he produce the following documents with such answers in accordance with Rule 34 of the Federal Rules of Civil Procedure.

Unless otherwise stated, these interrogatories relate to the time period from and including November 29, 1971 to the present.

DEFINITIONS

For the purposes of these Interrogatories and Requests for Production, the following definitions are employed:

(1) "Person" shall include in its meaning a partnership, joint venture, corporation, association, trust, or any other kind of entity, as well as a natural person.

(2) "The purported class" is defined as those persons whom you refer to as a "class" in the allegations of the

Complaint herein.

(3) An "agent" of any given person or entity is any official, director, employee, trustee, officer, attorney, accountant, consultant, servant, limited partner, general partner, or other person or entity that acted or purported to act for, or on behalf of, or for the benefit of, that person or entity.

(4) "Documents" or "writings" as used herein are defined as documents, records, books, papers, contracts, memoranda, invoices, correspondence, notes, photographs, drawings, recording tapes, recording discs, mechanical or electronic information storage or recording elements, and any other "documents" as defined in Rule 34 of the Federal Rules of Civil Procedure. If a document has been prepared in several copies, or additional copies have been made that are not identical (or are no longer identical by reason of subsequent notation or other modification of any kind whatever, including without limitation notations on the backs of pages thereof), each nonidentical copy is a separate document.

(5) "Relating" is defined as referring in any way to,

being evidence of, or memorializing, all or any portion of the specified facts or contentions.

(6) "Identify," "identification," or "identity" has the following meanings:

(a) when used in reference to a natural person it means to state the person's full name, title and job description (if applicable) and the person's residence address and business address or, if unknown, the last known business or residence address;

(b) when used in reference to a partnership it means to state the full partnership name and the address of its principal office;

(c) when used in reference to a corporation it means to state its full name, its state of incorporation, the address of its principal office and each of its present business addresses;

(d) when used in reference to a document it means to state the type of document (e.g., letter, memorandum, telegram, chart, etc.) or some other

means of identifying it, its author and originator, its date or dates, all addressees and recipients, when and how you first became aware of it, and its present location or custodian. If any such document was but is no longer in your possession or subject to your control, state what disposition was made of it; and

(c) When used in reference to an oral communication it means to state the speaker, the person spoken to, the date, the place of communication and the substance of such oral communication with particularity.

(7) The term "reviewed" when used with respect to a writing means to have read, looked at or listened to all or any part of the writing.

(8) The term "option" refers to a call option, as specified in paragraph 2 of the Complaint.

(9) The term "underlying security" means the security which is the subject of any option.

(10) The term "underlying corporation" means the issuer of any underlying security.

(11) The term "dispose" or "disposition", when used herein with reference to an option, means the sale, gift, exercise or expiration of that option or any event by which plaintiff ceased to have rights to an unexpired option.

INTERROGATORIES

1. State as to each option purchased by you, including any options purchased since the date of your answers to defendants' interrogatories dated January 29, 1972, the identity of the underlying security, the name of the underlying corporation, the consideration given, the date of acquisition and the identity of the person from whom you acquired each such option.

2. With respect to each of the options identified in your answer to Interrogatory No. 1 hereof, separately state:

(a) whether prior to your purchase of said option you owned or had any beneficial interest in, or any option, right or obligation, of any kind or type whatsoever, with respect to, any security of the underlying corporation;

(b) if your answer to subpart 2(a) hereof is affirmative with respect to any option, separately state with respect to each such option:

(i) the nature of, and the date or dates upon which you acquired, said interest, option, right or obligation;

(i) the identity of the issuer, the class or type, and the number of shares, of said stock with respect to which you had such an interest, option, right or obligation; and

(iii) whether prior to the expiration date of said option the nature of said preexisting interest, option, right or obligation was altered or modified, or disposed of by you, and, if so, state the nature of said alteration or modification or disposition and the date or dates upon which it occurred.

(c) whether subsequent to your purchase of said option you owned or had any beneficial interest in, or any other option, or right or obligation, of any kind or type whatsoever, with respect to, the stock, of whatever class or type, of the underlying corporation;

(d) if your answer to subpart 2(c) hereof is affirmative with respect to any option, separately state with respect to each such option the information requested in subparts 2(b)(i) through (iii), inclusive, hereof.

3. With respect to each of the options identified in your answer to Interrogatory No. 1 hereof, separately state:

(a) whether prior to your purchase of said option you read or had available to you, in whole or in part, any annual report, prospectus or any other financial statement of or concerning the underlying corporation;

(b) if your answer to subpart 3(a) hereof is affirmative with respect to any option, separately state with respect to each such option:

(i) the date or dates upon which you read or had available to you, in whole or in part, said annual report, prospectus or financial statement;

(ii) the date of said annual report, prospectus or financial statement and the name of the underlying corporation; and

(iii) the identity of the person or persons from whom you obtained said annual report, prospectus or financial statement;

(c) whether prior to your purchase of said option

you discussed, conversed or communicated, orally or in writing, with any person concerning:

(i) the financial condition, performance or prospects of the underlying corporation;

(ii) the financial condition of the person who wrote or would write said option; or

(iii) the financial condition of the person who endorsed or would endorse said option;

(d) if your answer to subpart 3(c) hereof is affirmative, in whole or in part, with respect to any such option, separately identify with respect to each such option:

(i) each person with whom you had said discussion, conversation or communication;

(ii) each document which refers or relates, in whole or in part, to said discussion, conversation or communication; and

(iii) each of said oral discussions, conversations or communications.

4. With respect to each of the options identified in your answer to Interrogatory No. 1 hereof, separately state:

(a) whether any director, officer, partner, associate, employee or agent of any of the defendants or any other person, solicited or recommended your purchase of said option;

(b) if your answer to subpart 4(a) hereof is affirmative with respect to any such option, separately identify with respect to said option:

(i) each director, officer, partner, associate, employee, or agent of any defendant or any other person, who allegedly solicited or recommended your purchase of said option;

(ii) each document which constitutes, refers or relates, in whole or in part, to said solicitation or recommendation; and

(iii) each oral discussion, conversation or communication which constituted, referred or related, in whole or in part, to said solicitation or recommendation.

5. If you have ever disposed of any or all of the options you acquired at any time, state the following with respect to each such disposition:

(a) the date of the disposition;

(b) the identity of the option disposed of;

(c) the nature of the disposition (e.g., sale, gift, or exercise);

(d) a complete description of the consideration which you received in the transaction in which you made the disposition (e.g., if you made a profit, the amount of that profit);

(e) the identity of the person to whom the disposition was made, if known;

(f) if the disposition was made through a broker/dealer, identify the broker/dealer through which the order was placed, including but not limited to the account representative with whom you dealt and the pertinent account number;

(g) state whether you made the disposition after consultation, discussion, or other communication with any person with respect to disposing of the option;

(h) if the answer to Interrogatory No. 5(g) above is other than an unqualified negative:

(i) identify all persons with whom you consulted, discussed or otherwise communicated

(prior to the disposition) with respect to the disposition;

(ii) identify all oral communications you participated in (prior to the disposition) with any and all persons with respect to the disposition;

(iii) identify all writings relating to any and all such consultations, discussions, or communications;

(i) Whether you made the disposition after receiving the recommendation or advice of any person with respect thereto;

(j) If your answer to interrogatory 5(i) is other than an unqualified negative:

(i) identify all persons giving you such advice or recommendation;

(ii) identify all oral communications with each such person with respect to the disposition;

(iii) identify all writings relating to any and all such communications, recommendations, and advice;

(k) The identity of all writings reviewed by you at the time of or prior to the disposition, if any, relating to the business and financial condition of the underlying corporation;

(l) The identity of all writings reviewed by you (at any time) relating to the disposition;

(m) The identity of all writings relating to the disposition;

(n) The identity of all oral communications subsequent to the disposition in which the disposition was discussed;

(o) Your reason for the disposition;

(p) If the acts referred to in your answer to this interrogatory were performed by your agent, please set forth the agent's name, address, telephone number, occupation and relationship to you (e.g., he was my accountant, my attorney, my father, etc.).

6. Did you make any attempt, at the time of, or prior to, your acquisition of any option to determine the financial condition and prospects of the underlying corporation?

7. If your answer to interrogatory No. 6 is other than an unqualified negative, state the following with respect to

each action which you undertook in furtherance of such attempt:

(a) Describe the actions you undertook and state the date(s) on which such action occurred;

(b) Identify all oral communications relating to such action;

(c) Identify all writings relating to such action;

(d) If the acts referred to in your answer to this interrogatory were performed by your agent, please set forth the agent's name, address, telephone number, occupation and relationship to you (e.g., he was my accountant, my attorney, my broker etc.).

8. Subsequent to your acquisition of any option, did you make any attempt to determine the then current financial condition or future prospects of the underlying corporation?

9. If so, state the following with respect to each act you did in furtherance of that attempt:

(a) Describe the act and state the dates on which it occurred;

(b) Identify all oral communications relating

to the act;

(c) Identify all writings relating to the act;

(d) If the acts referred to in your answer to this interrogatory were performed by your agent, please set forth the agent's name, address, telephone number, occupation and relationship to you (e.g., he was my accountant, my attorney, my father, etc.).

10. Identify each person who has at any time communicated to you or your agent his interest in or willingness to become a plaintiff in this litigation, or with whom you or your agent have discussed this litigation, and state as to each such person:

(a) the date on which such a written or oral communication occurred;

(b) the form of such communication (e.g., letter, orally);

(c) the identity of all writings relating to such communication;

(d) the identity of all such communications;

(e) the manner or means by which such person learned of the existence, or potential existence, of this litigation;

(f) the identity of your agent who was a party to such communication and his relationship to you (e.g., he was my accountant, my attorney, my father, etc.)

11. Have you or your agent had any communication with any person who is a member of the purported class relating to the commencement or prosecution of this litigation?

12. If the answer to Interrogatory No. 11 is other than an unqualified negative, with respect to each such communication:

(a) If the communication was oral, or partially oral, identify the oral communication;

(b) If the communication was written, or partially written, identify the writing;

(c) Identify all writings relating to the communication;

(d) Identify all oral communications relating to the communication;

(e) If the communication with the person referred to herein was with your agent, please set forth the agent's identity and relationship to you (e.g., he was

my accountant, my attorney, my father, etc.).

13. Identify each person who has at any time communicated to you or your agent his lack of interest or unwillingness to become a plaintiff in this litigation, and state as to each such person:

(a) the date on which such a written or oral communication occurred;

(b) the form of such communication (e.g., by letter, orally);

(c) the identity of all writings relating to such communication;

(d) the identity of all such communications;

(e) the manner or means by which such person learned of the existence, or potential existence, of this litigation?

(f) the identity of your agent who was a party to such communication and his relationship to you (e.g., he was my accountant, my attorney, my father, etc.).

14. Identify each person who is a member of the pur-

15. Do you have an agreement, arrangement, or understanding (whether tentative, conditional or otherwise) with your counsel with respect to costs or expenses other than attorneys' fees relating to this litigation?

16. If your answer to Interrogatory 15 is other than an unqualified negative, state the following:

(a) The substance of your agreement, arrangement, or understanding with respect to costs or expenses;

(b) The amount of costs or expenses that have been incurred by you in this litigation;

(c) The amount of each separate cost or expense incurred by you in this litigation, and a description of what was paid for by each such expense;

(d) The amount of costs or expenses that have been incurred by your counsel in this litigation;

(e) The amount of each separate cost or expense incurred by your counsel in this litigation, and a description of what was paid for by each such cost or expense;

(f) The amount you have paid to your counsel as reimbursement for expenses in this litigation;

(g) The amount you have been billed by your

ported class who has at any time indicated to you any desire or preference that he not be represented in litigation involving the subject matter of this litigation by you and state as to each such person:

(a) the date on which this desire or preference was indicated;

(b) the form of communication by which this desire or preference was indicated (e.g., by letter, orally);

(c) the identity of all writings relating to the person's said desire or preference;

(d) the identity of all oral communications relating to the person's said desire or preference;

(e) how did the person learn of the existence, or potential existence, of this litigation?;

(f) if such person indicated his desire or preference to your agent, please set forth the agent's name, address, telephone number, occupation and relationship to you (e.g., he was my accountant, my attorney, my father, etc.).

counsel for costs or expenses in this litigation;

(h) Identify all writings relating to the agreement, arrangement, or understanding referred to in your answer to Interrogatory No. 15 above.

(i) Identify all oral communications relating to the agreement, arrangement, or understanding referred to in your answer to Interrogatory No. 15 above.

17. State the amount of money which you are willing and able to pay to finance the costs and expenses of this action.

18. Is there any agreement, arrangement, or understanding (whether tentative, conditional, or otherwise) between you and any other person as to the payment by each of you, or division between each of you, or the payment by anyone, of costs, expenses, or disbursements with respect to this litigation?

19. If the answer to Interrogatory No. 18 above is other than an unqualified negative:

(a) Identify the persons who are parties to this agreement, arrangement, or understanding;

(b) State the substance of this agreement,

arrangement or understanding (including but not limited to the amount, or percentages, allotted to each of you);

(c) Identify all writings relating to the agreement, arrangement, or understanding;

(d) Identify all oral communications relating to the agreement, arrangement, or understanding.

20. In the event the Court permits this action to proceed as a class action, are you willing to bear the costs of prosecuting the class action, including costs and expenses incurred by your counsel in the course of discovery, the expenses of sending notices to the class members and other costs and expenses?

21. If the answer to Interrogatory No. 20 is other than an unqualified negative:

(a) What is the maximum amount of such costs and expenses which you are willing to bear; and

(b) What is the maximum amount you are financially able to bear?

22. What is the amount of loss, if any, you claim to have suffered by reason of the alleged wrongs in the Complaint and how is that amount calculated?

23. What is the total number of persons (or approximate total number of persons) whom you claim are included in the purported class?

24. Did any person make suggestions or recommendations to you with respect to the initiation (whether by you or someone else) of a lawsuit with respect to the subject matter of this litigation?

25. If the answer to Interrogatory No. 24 above is other than an unqualified negative, state the following with respect to each such person:

(a) Identify the person;

(b) Identify all oral communications relating to the suggestion or recommendation;

(c) Identify all writings relating to the suggestion or recommendation;

(d) What information with respect to the subject matter of this lawsuit was known to the person prior to the suggestion or recommendation referred to in Interrogatory No. 24 above?;

(e) From whom, and on what date, did the person acquire the information referred to in Interrogatory No. 25(d) above?;

(f) Identify all oral communications relating to the acquisition, by the person, of the information referred to in Interrogatory No. 25(d) above;

(g) Identify all writings relating to the acquisition, by the person, of the information referred to in Interrogatory 25(d) above.

26. Did any person discuss with you the initiation (whether by you or someone else) of a lawsuit with respect to the subject matter of this litigation?

27. If the answer to Interrogatory No. 26 above is other than an unqualified negative, state the following with respect to each such person:

(a) Identify the person;

(b) Identify all oral communications relating to the discussion;

(c) Identify all writings relating to the discussion;

(d) What information with respect to the subject matter of this lawsuit was known to the person prior to the discussion referred to in Interrogatory No. 26 above?;

(e) From whom, and on what date, did the person acquire the information referred to in Interrogatory No. 27(d) above?;

(f) Identify all oral communications relating to the acquisition, by the person, of the information referred to in Interrogatory No. 27(d) above;

(g) Identify all writings relating to the acquisition, by the person, of the information referred to in Interrogatory No. 27(d) above.

28. State whether you or any member of your family are personally acquainted with any present or former officer, director or employee of any underlying corporation of any option purchased by you and if so, state:

(a) The name, the address and relationship of any such person;

(b) the name of the officer, director or employee;

(c) the date when such acquaintance commenced; and

(d) the circumstances under which such acquaintance commenced.

29. State fully, completely and in detail each and

every fact which you know or believe supports all or any part of the allegation in paragraph 4(d) of the Complaint that "plaintiff will fairly and adequately protect the interests of the class."

30. State fully, completely and in detail each and every fact which you know or believe supports all or any part of the allegation in paragraph 4(c) of the Complaint that "the class includes several thousand persons". Please further state:

(a) the number of members of the purported class or any subclasses;

(b) to the extent known to you, the name and address of each member thereof;

(c) the identity and location of all lists of members thereof; and

(d) any other basis for identifying the members of the purported class or subclasses.

31. State fully, completely and in detail each and every fact which you know or believe supports all or any part of the allegation in paragraph 4(d) of the Complaint that "[plaintiff's] claims are typical of the claims of all

class members". Further state fully, completely and in detail in what respect, if any, you have claims which are not typical of the claims of the members of the purported class you represent.

32. State fully, completely and in detail each and every fact which you know or believe supports all or any part of the allegation in paragraph 4(f) of the Complaint that there are "questions of law and fact common to the members of the class".

33. State fully, completely and in detail each and every fact which you know or believe supports all or any part of the allegation in paragraph 4(f) of the Complaint that the questions of law and fact common to the members of the class "predominate over any questions affecting individual members."

34. State fully, completely and in detail each and every fact which you know or believe supports all or any part of the allegation in paragraph 4(g) of the Complaint that "A class action is superior to other available methods for the fair and efficient adjudication of the controversy".

35. Define precisely each purported class, including

any subclasses, on behalf of which you are suing or which you purport to represent.

36. State as to each purported class or subclass:

(a) the alleged basis for its standing to sue each of the remaining defendants;

(b) the identity of the security which it allegedly purchased from each of the remaining defendants;

(c) whether plaintiff Leonard is or claims to be, a member of each such class or subclass.

37. Are you presently, or have you ever been, named as a party (whether or not in a class action) to any legal action whose subject matter, in whole or in part, related or relates to, transactions in securities?

38. If the answer to Interrogatory 37 above is other than an unqualified negative, state the following with respect to each such legal action:

(a) The complete title of the legal action and its case number;

(b) The name of the Court in which the legal action was or is pending;

(c) The date the legal action was filed;

(d) A description of the securities transaction out of which the plaintiff's claim in the legal action is alleged to have arisen;

(e) The name and business addresses of the attorneys who represented or are representing you in the legal action;

(f) Did the action go to trial and, if so, the date of judgment;

(g) Is the action still pending and, if so, give its status.

39. Are you, or have you ever been, to your knowledge, an unnamed member of a certified class, or an alleged class, in any legal action whose subject matter, in whole or in part, related or relates to transactions in securities?

40. If the answer to Interrogatory No. 39 above is in the affirmative, state the following with respect to each such legal action:

(a) The complete title of the legal action and its case number;

(b) The name of the Court in which the legal action was or is pending;

(c) The date the legal action was filed;

(d) A description of the securities transaction out of which the plaintiff's claim in the legal action is alleged to have arisen;

(e) The names and business addresses and telephone numbers of the attorneys who represented or are representing the alleged class in the legal action;

(f) Did the action go to trial and, if so, the date of judgment;

(g) Is the action still pending and, if so, give its status.

41. Have you ever been, or are you presently, a party to any civil litigation (including but not limited to the litigation referred to in your answers to Interrogatories Nos. 37 through 40, inclusive) in which judgment was entered against you? (Being or having been a "party" for purposes of this Interrogatory No. 41 and of Interroga ory Nos. 42, 43, and 44, shall include lit gation in which (i) you were named as a party individually, (ii) a partnership in which you were a general or limited partner was named as a party litigant, and (iii) a corporation was named as a party

litigant in which corporation you were the owner, beneficially or otherwise, of 10% or more of the outstanding capital stock.)

42. If the answer to Interrogatory No. 41 above is other than an unqualified negative, state the following with respect to each such civil litigation:

(a) The complete title of the legal action and its case number;

(b) The name of the Court in which the legal action was or is pending;

(c) The date the legal action was filed;

(d) A description of the events out of which the plaintiff's claim in the legal action is alleged to have arisen;

(e) The capacity in which you were or are involved as a party to the legal action (i.e., individually, as a shareholder of a specified corporation, as a partner of a specified partnership);

(f) The date of entry of the adverse judgment;

(g) A description of the adverse judgment (i.e., amount of all damages, general and special, awarded) and the extent, if any, to which such judgment presently remains unsatisfied.

43. Have you ever been, or are you presently, a party to any criminal litigation in which judgment was entered against you, or in which you entered a guilty plea or a plea of nolo contendere or no contest?

44. If the Answer to Interrogatory No. 43 above is other than an unqualified negative, state the following with respect to each such criminal litigation:

(a) The complete title of the legal action and its case number;

(b) The name of the Court in which the legal action was or is pending;

(c) The date the legal action was filed;

(d) A description of the events out of which the prosecution is alleged to have arisen;

(e) The capacity in which you were or are involved as a party to the legal action (i.e., individually, as a shareholder of a specified corporation, as a partner of a specified partnership);

(f) The date of entry of the adverse judgment;

(g) A description of the adverse judgment (i.e.,

amount of fine, extent of ordered incarceration) and the extent, if any, to which such judgment presently remains unsatisfied.

45. Are you related by blood or marriage to any of your attorneys or to any member or employee of any law firm representing you in this action?

46. If your answer to Interrogatory No. 45 above is other than an unqualified negative, please specify the nature of the relationship and identify each person to whom you are related.

47. State whether you or any member of your immediate family has had any business experience in the securities industry, and, if so, identify each such person and the nature of any such experience.

48. Did you enter into any agreements to purchase or sell any options which did not result in actual purchase or sale? If your answer to this interrogatory is other than an unqualified negative, please describe each such agreement, the parties thereto, and state the reason why such agreement was not consummated.

DEFENDANTS' INTERROGATORIES TO
PLAINTIFF-SECOND SET

REQUESTS FOR PRODUCTION

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendants hereby request that plaintiff produce and permit defendants to inspect and copy, at the offices of Brown, Wood, Fuller, Caldwell & Ivey, One Liberty Plaza, New York, New York 10006 the following documents within thirty (30) days of the date of service of this Request:

1. Each and every document you have identified in your answer to any of the above interrogatories;

2. Any and all broker/dealer confirmations relating to your acquisition of options.

Dated: New York, New York
January 2, 1975

BROWN, WOOD, FULLER, CALDWELL & IVEY

By _____
(A Member of the Firm)
Attorneys for J. C. Bradford & Co.
One Liberty Plaza
New York, New York 10006

SULLIVAN & CROMWELL

By _____
(A Member of the Firm)
Attorneys for Reynolds Securities In
48 Wall Street
New York, New York 10005

LOWENFELS, VOGEL & BERGER

PLAINTIFF'S ANSWERS AND OBJECTIONS
TO INTERROGATORIES-SECOND SET

Same Title

Plaintiff for his answers and objections to the Interrogatories of defendants, dated January 2, 1975, answers as follows:

1. State as to each option purchased by you, including any options purchased since the date of your answers to defendants' interrogatories dated January 29, 1972, the identity of the underlying security, the name of the underlying corporation, the consideration given, the date of acquisition and the identity of the person from whom you acquired each such option.

   A. Plaintiff objects to this interrogatory upon the grounds that it calls for information which is irrelevant to the issues herein and is not likely to lead to any relevant or material evidence.

2. With respect to each of the options identified in your answer to Interrogatory No. 1 hereof, separately state:

   (a) whether prior to your purchase of said option you owned or had any beneficial interest in, or any option, right or obligation, of any kind or type whatsoever, with respect to, any security of the underlying corporation;

(b) if your answer to subpart 2(a) hereof is affirmative with respect to any option, separately state with respect to each such option:

(i) the nature of, and the date or dates upon which you acquired, said interest, option, right or obligation;

(ii) the identity of the issuer, the class or type, and the number of shares, of said stock with respect to which you had such an interest, option, right or obligation; and

(iii) whether prior to the expiration date of said option the nature of said preexisting interest, option, right or obligation was altered or modified, or disposed of by you, and, if so, state the nature of said alteration or modification or disposition and the date or dates upon which it occurred.

(c) whether subsequent to your purchase of said option you owned or had any beneficial interest or any other option, or right or obligation, of any kind or type whatsoever, with respect to, the stock, of whatever class or type, of the underlying corporation;

(d) if your answer to subpart 2(c) hereof is affirmative with respect to any option, separately state with respect to each such option the information requested in subparts 2(b)(i) through (iii), inclusive, hereof.

A. See answer to Interrogatory No. 1.

3. With respect to each of the options identified in your answer to Interrogatory No. 1 thereof, separately state:

(a) whether prior to your purchase of said option you read or had available to you, in whole or in part, any annual report, prospectus or any other financial statement of or concerning the underlying corporation;

(b) if your answer to subpart 3(a) hereof is affirmative with respect to any option, separately state with respect to each such option:

(i) the date or dates upon which you read or had available to you, in whole or in part, said annual report, prospectus or financial statement;

(ii) the date of said annual report, prospectus or financial statement and the name of the underlying corporation; and

(iii) the identity of the person or persons from whom you obtained said annual report, prospectus or financial statement;

(c) whether prior to your purchase of said option you discussed, conversed or communicated, orally or in writing, with any person concerning:

(i) the financial condition, performance or prospects of the underlying corporation;

(ii) the financial condition of the person who wrote or would write said option; or

(iii) the financial condition of the person who endorsed or would endorse said option;

(d) if your answer to subpart 3(c) hereof is affirmative, in whole or in part, with respect to

any such option, separately identify with respect to each such option:

(i) each person with whom you had said discussion, conversation or communication;

(ii) each document which refers or relates, in whole or in part, to said discussion, conversation or communication; and

(iii) each of said oral discussions, conversations or communications.

A. See answer to Interrogatory No. 1.

4. With respect to each of the options identified in your answer to Interrogatory No. 1 hereof, separately state:

(a) whether any director, officer, partner, associate employee or agent of any of the defendants or any other person, solicited or recommended your purchase of said option;

(b) if your answer to subpart 4(a) hereof is affirmative with respect to any such option, separately identify with respect to said option;

(i) each director, officer, partner, associate, employee, or agent of any defendant or any other person, who allegedly solicited or recommended your purchase of said option;

(ii) each document which constitutes, refers or relates, in whole or in part, to said solicitation or recommendation; and

(iii) each oral discussion, conversation or communication which constituted, referred or related, in whole or in part to said solicitation or recommendation.

A. See answer to Interrogatory No. 1.

5. If you have ever disposed of any or all of the options you acquired at any time, state the following with respect to each such disposition:

(a) the date of the disposition;

(b) the identity of the option disposed of;

(c) the nature of the disposition (e.g., sale, gift, or exercise);

(d) a complete description of the consideration which you received in the transaction in which you made the disposition (e.g.,if you made a profit, the amount of that profit);

(e) the identity of the person to whom the disposition was made, if known;

(f) if the disposition was made through a broker/dealer, identify the broker/dealer through which the order was placed, including but not limited to the account representative with whom you dealt and the pertinent account number;

(g) state whether you made the disposition after consultation, discussion, or other communication with any person with respect to disposing of the option;

(h) if the answer to Interrogatory No. 5(g) above, is other than an unqualified negative:

(i) identify all persons with whom you consulted, discussed or otherwise communicated (prior to the disposition) with respect to the disposition.

(ii) identify all oral communications you participated in (prior to the disposition) with any and all persons with respect to the disposition;

(iii) identify all writings relating to any and all such consultations, discussions, or communications;

(i) whether you made the disposition after receiving the recommendation or advice of any person with respect thereto;

(j) if your answer to interrogatory 5(i) is other than an unqualified negative:

(i) identify all persons giving you such advice or recommendation;

(ii) identify all oral communications with each such person with respect to the disposition;

(iii) identify all writings relating to any and all such communications, recommendations, and advice;

(k) The identity of all writings reviewed by you at the time of or prior to the disposition, if any, relating to the business and financial condition of the underlying corporation;

(l) The identity of all writings reviewed by you (at any time) relating to the disposition;

(m) The identity of all writings relating to the disposition;

(n) The identity of all oral communications subsequent to the disposition in which the disposition was discussed;

(o) Your reason for the disposition;

(p) If the acts referred to in your answer to this interrogatory were performed by your agent, please set forth the agent's name, address, telephone number, occupation and relationship to you (e.g., he was my accountant, my attorney, my father, etc.).

A. Plaintiff objects to this Interrogatory upon the grounds that it assumes that he, in fact, ever disposed of any of the options when there is no such information.

6. Did you make any attempt, at at the time of, or prior to, your acquisition of any option to determine the financial condition and prospects of the underlying corporation?

A. Plaintiff objects to this Interrogatory upon the grounds, among others, that it has previously been asked with respect to the First Set of Interrogatories served by defendants upon the deposition of plaintiff and because it is irrelevant to the issues in this litigation and is not likely to lead to any material or relevant evidence.

7. If your answer to interrogatory No. 6 is other

than an unqualified negative, state the following with respect to each action which you undertook in furtherance of such attempt:

(a) Describe the actions you undertook and state the date(s) on which such action occurred;

(b) Identify all oral communications relating to such action;

(c) Identify all writings relating to such action;

(d) If the acts referred to in your answer to this interrogatory were performed by your agent, please set forth the agent's name, address, telephone number, occupation and relationship to you (e.g., he was my accountant, my attorney, my broker etc.).

A. See answer to Interrogatory No. 6.

8. Subsequent to your acquisition of any option, did you make any attempt to determine the then current financial condition or future prospects of the underlying corporation?

A. Plaintiff objects to this Interrogatory upon the grounds that it is irrelevant to the issues herein and the answer to which will not lead to any relevant or material evidence.

9. If so, state the following with respect to each act you did in furtherance of that attempt:

(a) Describe the act and state the dates on which it occurred;

(b) Identify all oral communications relating to the act;

(c) Identify all writings relating to the act;

(d) If the acts referred to in your answer to this interrogatory were performed by your agent, please set forth the agent's name, address, telephone number, occupation and relationship to you (e.g., he was my accountant, my attorney, my father, etc.).

A. Inapplicable.

10. Identify each person who has at any time communicated to you or your agent his interest in or willingness to become a plaintiff in this litigation, or with whom you or your agent have discussed this litigation, and state as to each such person:

(a) the date on which such a written or oral communication occurred;

(b) the form of such communication (e.g., letter, orally);

(c) the identity of all writings relating to such communication;

(d) the identity of all such communications;

(e) the manner or means by which such person learned of the existence, or potential existence, of this litigation;

(f) the identity of your agent who was a party to such communication and his relationship to you (e.g., he was my accountant, my attorney, my father, etc.).

A. None.

11. Have you or your agent had any communication with any person who is a member of the purported class relating to the commencement or prosecution of this litigation?

A. No.

12. If the answer to Interrogatory No. 11 is other than an unqualified negative, with respect to each such communication:

(a) If the communication was oral, or partially oral, identify the oral communication;

(b) If the communication was written, or partially written, identify the writing;

(c) Identify all writings relating to the communication;

(d) Identify all oral communications relating to the communication;

(e) If the communication with the person referred to herein was with your agent, please set forth the agent's identity and relationship to you (e.g., he was my accountant, my attorney, my father, etc.).

A. Inapplicable.

13. Identify each person who has at any time communicated to you or your agent his lack of interest or unwillingness to become a plaintiff in this litigation, and state as to each such person:

(a) the date on which such a written or oral communication occurred;

(b) the form of such communication (e.g., by letter, orally);

(c) the identity of all writings relating to such communication;

(d) the identity of all such communications;

(e) the manner or means by which such person learned of the existence, or potential existence, of this litigation?

(f) the identity of your agent who was a party to such communication and his relationship to you (e.g., he was my accountant, my attorney, my father, etc.).

A. None.

14. Identify each person who is a member of the purported class who has at any time indicated to you any desire or preference that he not be represented in litigation involving the subject matter of this litigation by you and state as to each such person:

(a) the date on which this desire or preference was indicated;

(b) the form of communication by which this desire or preference was indicated (e.g., by letter, orally);

(c) the identity of all writings relating to the person's said desire or preference;

(d) the identity of all oral communications relating to the person's said desire or preference;

(e) how did the person learn of the existence, or potential existence, of this litigation?;

(f) if such person indicated his desire or preference to your agent, please set forth the agent's name, address, telephone number, occupation and relationship to you (e.g., he was my accountant, or attorney, my father, etc.)

A. None.

15. Do you have an agreement, arrangement, or understanding (whether tentative, conditional or otherwise) with your counsel with respect to costs or expenses other than attorneys' fees relating to this litigation?

A. Yes.

16. If your answer to Interrogatory 15 is other than an unqualified negative, state the following:

(a) The substance of your agreement arrangeme or understanding with respect to costs or expenses;

(b) The amount of costs or expenses that have been incurred by you in this litigation;

(c) The amount of each separate cost or expens incurred by you in this litigation, and a description of what was paid for by each such expense;

(d) The amount of costs or expenses that have been incurred by your counsel in this litigation;

(e) The amount of each separate cost or expense incurred by your counsel in this litigation, and a description of what was paid for by each such cost or expense;

(f) The amount you have paid to your counsel as reimbursement for expenses in this litigation;

(g) The amount you have been billed by your counsel for costs or expenses in this litigation;

(h) Identify all writings relating to the agreement, arrangement, or understanding referred to in your answer to Interrogatory No. 15 above.

A. (a) Without in any way waiving attorney-client privilege, plaintiff will be responsible for costs and expenses subject to reimbursement by court order should the case be settled or plaintiff otherwise successful;

(b-i) Plaintiff objects to providing the answers to these Interrogatories upon the grounds that they call for privileged communica-

tions between attorney and client and seek information which is irrelevant to the issues herein and is not likely to lead to any relevant or material evidence.

17. State the amount of money which you are willing and able to pay to finance the costs and expenses of this action.

A. Plaintiff objects to this Interrogatory upon the grounds that it seeks information which is irrelevant to the issues herein and is unlikely to lead to any evidence which is relevant or material.

18. Is there any agreement, arrangement, or understanding (whether tentative, conditional, or otherwise between you and any other person as to the payment by each of you, or division between each of you, or the payment by anyone, of costs, expenses, or disbursements with respect to this litigation?

A. No.

19. If the answer to Interrogatory No. 18 above is other than an unqualified negative:

(a) Identify the persons who are parties to this agreement, arrangement, or understanding;

(b) State the substance of this agreement, arrangement or understanding (including but not limited to the amount, or percentages, allotted to each of you);

(c) Identify all writings relating to the agreement, arrangement, or understanding;

(d) Identify all oral communications relating to the agreement, arrangement, or understanding.

A. Inapplicable.

20. In the event the Court permits this action to proceed as a class action, are you willing to bear the costs of prosecuting the class action, including costs and expenses incurred by your counsel in the course of discovery, the expenses of sending notices to the class members and other costs and expenses?

A. Yes.

21. If the answer to Interrogatory No. 20 is other than an unqualified negative:

(a) What is the maximum amount of such costs and expenses which you are willing to bear; and

(b) What is the maximum amount you are financially able to bear?

A. Plaintiff objects to this Interrogatory upon the grounds it seeks information which is irrelevant to the issues herein and is not likely to lead to any material or relevant evidence.

22. What is the amount of loss, if any, you claim to have suffered by reason of the alleged wrongs in the Complaint and how is that amount calculated?

A. Among other things, the amount paid for the option plus commissions plus interest.

23. What is the total number of persons (or approximate total number of persons) whom you claim are included in the purported class?

A. Plaintiff cannot state with precision, the total number of persons in the class. He believes the number to be in excess of 7500.

24. Did any person make suggestions or recommendations to you with respect to the initiation (whether by you or someone else) of a lawsuit with respect to the subject matter of this litigation?

A. Plaintiff refuses to answer this Interrogatory upon the grounds that it calls for privileged communication between attorney and client.

25. If the answer to Interrogatory No. 24 above is other than an unqualified negative, state the following with respect to each such person:

(a) Identify the person;

(b) Identify all oral communications relating to the suggestion or recommendation;

(c) Identify all writings relating to the suggestion or recommendation;

(d) What information with respect to the subject matter of this lawsuit was known to the person prior to the suggestion or recommendation referred to in Interrogatory No. 24 above?;

(e) From whom, and on what date, did the person acquire the information referred to in Interrogatory No. 25(d) above?'

(f) Identify all oral communications relating to the acquisition, by the person, of the information referred to in Interrogatory No. 25(d) above;

(g) Identify all writings relating to the acquisition, by the person, of the information referred to in Interrogatory 25(d) above.

A. See answer to Interrogatory No. 24.

26. Did any person discuss with you the initiation (whether by you or someone else) of a lawsuit with respect to the subject matter of this litigation?

A. Plaintiff declines to answer this Interrogatory

upon the grounds that it calls for privileged communication between attorney and client.

27. If the answer to Interrogatory No. 26 above is other than unqualified negative, state the following with respect to each such person:

(a) Identify the person;

(b) Identify all oral communications relating to the discussion;

(c) Identify all writings relating to the discussion

(d) What information with respect to the subject matter of this lawsuit was known to the person prior to the discussion referred to in INterrogatory No. 26 above?;

(e) From whom, and on what date, did the person acquire the information referred to in Interrogatory No. 27(d) above?'

(f) Identify all oral communications relating to the acquisition, by the person, of the information referred to in Interrogatory No. 27(d) above;

(g) Identify all writings relating to the acquisition, by the person, of the information referred to in Interrogatory No. 27(d) above.

A. See answer to Interrogatory No. 26.

28. State whether you or any member of your family are personally acquainted with any present or former officer,director or employee of any underlying corporation of any option purchased by you and if so, state:

(a) The name, the address and relationship of any such person;

(b) The name of the officer, director or employee;

(c) The date when such acquaintance commenced; and

(d) The circumstances under which such acquaintance commenced.

A. No.

29. State fully, completely and in detail each and every fact which you know or believe supports all or any part of the allegation in paragraph 4(d) of the Complaint that "plaintiff will fairly and adequately protect the interests of the class."

A. Plaintiff objects to this Interrogatory upon the grounds that it calls for legal conclusions and arguments beyond the scope of interrogatories.

30. State fully, completely and in detail each and every fact which you know or believe supports all or any part of the allegation in paragraph 4(c) of the Complaint that "the class includes several thousand persons." Please further state:

(a) the number of members of the purported class or any subclasses;

(b) to the extent known to you, the name and address of each member thereof;

(c) the identity and location of all lists of members thereof; and

(d) any other basis for identifying the members of the purported class or subclasses.

A. Plaintiff objects to this Interrogatory upon the grounds that it calls for legal argument and conclusion beyond the proper scope of interrogatories.

31. State fully, completely and in detail each and every fact which you know or believe supports all or any part of the allegation in paragraph 4(d) of the Complaint that "[plaintiff's] claims are typical of the claims of all class members." Further state fully, completely and in detail in what respect, if any, you have claims which are not typical of the claims of the members of the purported class you represent.

A. Plaintiff objects to this Interrogatory upon the grounds that it calls for legal argument and conclusion beyond the proper scope of interrogatories.

32. State fully, completely and in detail each and every fact which you know or believe supports all or any part of the allegation in paragraph 4(f) of the Complaint that there are "questions of law and fact common to the members of the class."

A. Plaintiff objects to this Interrogatory upon the ground that it calls for legal argument and conclusion beyond the proper scope of interrogatories.

33. State fully, completely and in detail each and every fact which you know or believe supports all or any part of the allegation in paragraph 4(f) of the Complaint that the questions of law and fact common to the members of the class "predominate over any questions affecting individual members."

A. Plaintiff objects to this Interrogatory upon the grounds it calls for legal arguments and conclusions beyond the proper scope of interrogatories.

34. State fully, completely and in detail each and every fact which you know or believe supports all or any part of the allegation in paragraph 4(g) of the Complaint that "A class action is superior to other available methods for the fair and efficient adjudication of the controversy."

A. Plaintiff objects to this Interrogatory upon the grounds that it calls for legal arguments and conclusions beyond the proper scope of interrogatories.

35. Define precisely each purported class, including any subclasses, on behalf of which you are suing or which you purport to represent.

A. All those who purchased Options as defined in the complaint from the defendants during the period November 29, 1971 through November 29,197

36. State as to each purported class or subclass:

(a) the alleged basis for its standing to sue each of the remaining defendants;

(b) the identity of the security which it allegedly purchased from each of the remaining defendant

(c) whether plaintiff Leonard is or claims to be a member of each such class or subclas

A. (a) The basis for its standing to sue is that members of the class purchased Options fro the defendants;

(b) Options;

(c) Yes.

37. Are you presently, or have you ever been, named as a party (whether or not in a class action) to any legal action whose subject matter, in whole or in part, related or relates to transactions in securities?

A. No.

38. If the answer to Interrogatory 37 above is other than an unqualified negative, state the following with respect to each such legal action:

(a) The complete title of the legal action and its case number;

(b) The name of the Court in which the legal action was or is pending;

(c) The date the legal action was filed;

(d) A description of the securities transaction out of which the plaintiff's claim in the legal action is alleged to have arisen;

(e) The name and business addresses of the attorneys who represented or are representing you in the legal action;

(f) Did the action go to trial and, if so, the date of judgment;

(g) Is the action still pending and, if so, give the status.

A. Inapplicable.

PLAINTIFF'S ANSWERS AND OBJECTIONS
TO INTERROGATORIES-SECOND SET

39. Are you, or have you ever been, to your knowledge, an unnamed member of a certified class, or an alleged class, in any legal action whose subject matter, in whole or in part, related or relates to transactions in securities?

A. Plaintiff objects to this Interrogatory upon the grounds that it calls for information which is irrelevant to the issues herein and is not likely to lead to any relevent or material evidence.

40. If the answer to Interrogatory No. 39 above is in the affirmative, state the following with respect to each such legal action:

(a) The complete title of the legal action and its case number;

(b) The name of the Court in which the legal action was or is pending;

(c) The date the legal action was filed;

(d) A description of the securities transaction out of which the plaintiff's claim in the legal action is alleged to have arisen;

(e) The names and business addresses and telephone numbers of the attorneys who represented or are representing the alleged class in the legal action;

(f) Did the action go to trial and, if so, the date of judgment;

(g) Is the action still pending and, if so, give its status.

A. See answer to Interrogatory 39.

41. Have you ever been, or are you presently, a party to any civil litigation (including but not limited to the litigation referred to in your answers to Interrogatories Nos. 37 through 40, inclusive) in which judgment was entered against you? (Being or having been a "party" for purposes of this Interrogatory No. 41 and of Interrogatories Nos. 42, 43, and 44, shall include litigation

> in which (i) you were named as a party individually, (ii) a partnership in which you were a general or limited partner was named as a party litigant, and (iii) a corporation was named as a party litigant in which corporation you were the owner, beneficially or otherwise, of 10% or more of the outstanding capital stock.)

A. Plaintiff objects to this Interrogatory upon the grounds that it seeks information which is irrelevant to the issues herein and is not likely to lead to any relevant or material evidence.

42. If the answer to Interrogatory No. 41 above is other than an unqualified negative, state the following with respect to each such civil litigation:

(a) The complete title of the legal action and its case number;

(b) The name of the Court in which the legal action was or is pending;

(c) The date the legal action was filed;

(d) A description of the events out of which the plaintiff's claim in the legal action is alleg to have arisen;

(e) The capacity in which you were or are involved as a party to the legal action (i.e., individually, as a shareholder of a specified corporation, as a partner of a specified partnership);

(f) The date of entry of the adverse judgment;

(g) A description of the adverse judgment (i.e., amount of all damages, general and special, awarded) and the extent, if any, to which such judgment presently remains unsatisfied.

A. See answer to Interrogatory No. 41.

43. Have you ever been, or are you presently, a party to any criminal litigation in which judgment was entered against you, or in which you entered a guilty plea or a plea of nolo contendere or no contest?

A. No.

any law firm representing you in this action?

A. No.

44. If the Answer to Interrogatory No. 43 above is other than an unqualified negative, state the following with respect to each such criminal litigation:

(a) The complete title of the legal action and its case number;

(b) The name of the Court in which the legal action was or is pending;

(c) The date the legal action was filed;

(d) A description of the events out of which the prosectuion is alleged to have arisen;

(e) The capacity in which you were or are involved as a party to the legal action (i.e., individually, as a shareholder of a specified corporation, as a partner of a specified partnership);

(f) The date of entry of the adverse judgment;

(g) A description of the adverse judgment (i.e., amount of fine, extent of ordered incarceration) and the extent, if any, to which such judgment presently remains unsatisfied.

A. Inapplicable.

45. Are you related by blood or marriage to any of your attorneys or to any member or employee of

PLAINTIFF'S ANSWERS AND OBJECTIONS
TO INTERROGATORIES--SECOND SET

46. If your answer to Interrogatory No. 45 above is other than an unqualified negative, please specify the nature of the relationship and identify each person to whom you are related.

A. Inapplicable.

47. State whether you or any member of your immediate family has had any business experience in the securities industry, and, if so, identify each such person and the nature of any such experience.

A. No.

48. Did you enter into any agreements to purchase or sell any options which did not result in actual purchase or sale? If your answer to this interrogatory is other than an unqualified negative, please describe each such agreement, the parties thereto, and state the reason why such agreement was not consummated.

A. No.

Dated: June 11, 1975.

AS TO OBJECTIONS:

A. ARNOLD GERSHON
DINOV, MORRIS, LEVIN & SHEIN

By Irving Bizar
A Member of the Firm

Attorneys for Plaintiff

AS TO ANSWERS TO INTERROGATORIES

s/ Merle W. Leonard
Merle W. Leonard

PLAINTIFF'S ANSWERS AND OBJECTIONS
TO INTERROGATORIES -SECOND SET

STATE OF ~~NEW YORK~~ GEORGIA)
: ss.:
COUNTY OF NEW YORK)

MERLE W. LEONARD, being duly sworn, deposes and says that deponent is the plaintiff in the within action; that deponent has read the foregoing Answers and Objections to Interrgatories of Defendants - Second Set and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, deponent believes it to be true.

Merle W Leonard

Sworn to before me this
11th day of ~~May~~ June, 1975.

Laura H. Corcoran

Notary Public, Georgia, State at Large
My Commission Expires Dec. 22, 1978

DEFENDANTS' NOTICE FOR FURTHER ANSWERS OR SUB-CLASSES, DATED AUGUST 18, 1975

Same Title

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Thomas J. Mullaney, sworn to August 18, 1975, the plaintiff answers and objections to defendants' interrogatories annexed thereto, the memorandum of law submitted herewith, and upon the pleadings and other prior proceedings herein, the undersigned will move this Court before the Honorable Gerald L. Goettel, United States Magistrate, in Room 502, United States Courthouse, Foley Square, New York, New York on August 25, 1975 at 10:00 a.m. or as soon thereafter as counsel may be heard for an order pursuant to Rule 37 F.R. Civ. P. dismissing the complaint in this action or striking the class action allegations of the complaint or, in the alternative, directing plaintiff to furnish full and complete answers to all interrogatories forthwith, and granting said other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 18, 1975

Yours, etc.,

BROWN, WOOD, FULLER, CALDWELL & IVE

By S[illegible] O. B[illegible]
(A Member of the Firm)

DEFENDANTS' MOTION FOR FURTHER ANSWERS
OR SANCTIONS, DATED AUGUST 18,1975

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

THOMAS J. MULLANEY, being duly sworn, deposes and says:

1. I am associated with the firm of Brown, Wood, Fuller, Caldwell & Ivey, attorneys for J. C. Bradford & Co., one of the defendants in this action.

2. On January 2, 1975 the defendants in this purported class action served a set of interrogatories on the plaintiff. These interrogatories were addressed to the class action issues in this case. The service of these interrogatories was made pursuant to a time schedule agreed to at a pre-trial conference before Magistrate Goettel on November 18, 1974.

3. Plaintiff made no response of any kind to these interrogatories for eight months. Finally, on August 4, 1975 plaintiff's attorneys served papers which are denominated "Answers and Objections", but which are wholly inadequate to provide any information at all on the class action issue. A complete set of the interrogatories and of the responses as served by the plaintiff is annexed hereto as Exhibit A. Individual interrogatories and responses

are discussed in the accompanying memorandum of law.

4. The interrogatories were accompanied by a Request for Production of those documents identified in the answers to interrogatories. Plaintiff evaded this request by identifying no documents.

5. The defendants submit that the plaintiff has unilaterally decided not to provide any information on the class action issue. Plaintiff's extreme delay in responding constitutes a waiver of any right to object. Even when considered on the merits, plaintiff's objections are completely without substance. The only "answers" made by the plaintiff consist almost entirely of a few one-word denials; almost every question that could not be so treated was objected to.

6. Such responses should be treated as a failure to answer and the sanction of dismissal should be imposed pursuant to Rule 37, F.R. Civ. P. If the Court is unwilling to dismiss the entire complaint, the class action allegations of the complaint should be stricken since the plaintiff has refused to answer interrogatories addressed to those class action allegations and since such conduct reflects adversely on plaintiff's ability to adequately represent any class.

If the Court nevertheless wishes to give plaintiff more time to answer, it should order full and complete answers within a very brief period, in view of the preceding eight month delay.

WHEREFORE, the defendant J.C. Bradford requests that this motion pursuant to F.R. Civ. P. 37 be granted and that the complaint in this action be dismissed or that the class action allegations of the complaint be stricken or, in the alternative, that plaintiff be required to provide full and complete answers to all interrogatories forthwith.

THOMAS J. MULLANEY

Sworn to before me this
18th day of August, 1975.

Notary Public

JOSEPH P. BOSCO
Notary Public, State of New York
No. 43-4503450
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires March 30, 1977

Same Title

EXHIBIT A to Affidavit of THOMAS J. MULLANEY

(See A 125)

PLAINTIFF'S OPPOSING AFFIDAVIT
DATED AUGUST 21, 1975

Same Title

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

IRVING BIZAR, being duly sworn, deposes and says:

I am a member of the Bar of this Court and of the firm of Demov, Morris, Levin & Shein, co-counsel to the above named plaintiff, and am familiar with the facts and prior proceedings herein. This affidavit is submitted in opposition to the motion of defendant J. C. Bradford & Co. for relief pursuant to Rule 37 FRCP.

As will be shown below, defendant's motion should be denied.

At the outset, it is necessary to note that defendant is moving with respect to Interrogatories dated January 2, 1975, served three years after their first set of interrogatories addressed to plaintiff, and approximately one year and a half after the deposition of plaintiff was taken. Many of the items

inquired into in the second set of interrogatories were the subject of questioning in defendants' first set and upon the deposition of plaintiff, and answers were either given or objections made for the same reasons set forth in the second set of interrogatories. Defendants made no attempt on those prior occasions to obtain rulings, and to the extent that their second set of interrogatories seeks new information, they had ample opportunity on those prior occasions to obtain the matters sought. Defendants' conduct precludes them from complaining about our objections to their second set of interrogatories.

Moreover, plaintiff properly answered all the interrogatories in the second set that could be answered. The balance of the interrogatories were patently objectionable as will be shown hereinafter.

PLAINTIFF'S OPPOSING AFFIDAVIT
DATED AUGUST 21, 1975

Interrogatories 1 through 9 sought information as to whether plaintiff had purchased options since his answers to defendants' Interrogatories dated January 29, 1972, what disposition he had made of any of the options he had acquired, and what steps he took to determine the financial condition and prospects of the underlying corporation.

That information was initially sought in defendants' first set of interrogatories and supplied. It was again sought on the deposition of Mr. Leonard held on May 10, 1973. At that time, plaintiff further supplied the information. Since this litigation involves a period of November 1971 to November 1972, it is respectfully submitted that there is no need to determine what plaintiff has done with respect to options more than six months after the period has ended-right down to date.

Plaintiff also objected to Interrogatories 16(b) - (h), 17 and 21. The answers to these questions are irrelevant for the reasons set forth in the accompanying Memorandum of Law.

PLAINTIFF'S OPPOSING AFFIDAVIT
DATED AUGUST 21, 1975

We submit we have properly answered Interrogatory 22. We also seek an accounting in this action and we cannot describe the full measure of our damage without such accounting. Nevertheless, we have set forth the formula by which such calculation of our damage can take place. It may be noted that defendants received the exact amount of our damage at the deposition on May 10, 1973.

Plaintiff objected to Interrogatories 24 through 27 upon the grounds that it called for privileged communications between attorney and client. Movant has set forth no reasons why that privilege should not apply.

Plaintiff also objected to Interrogatories 29 through 34 on the grounds that it sought legal arguments. As shown in the accompanying Memorandum of Law, that is inappropriate for Interrogatories.

Plaintiff also objected to Interrogatories 39 through 42 which sought information respecting litigations to which plain

tiff was a party. Plaintiff already answered in the second set of interrogatories, the inquiry as to whether he was a party to any class action suits involving securities (he answered "No"). Any other litigations are irrelevant; it may be noted that plaintiff also answered with respect to any criminal proceedings pending or formerly brought against him. (He answered "No").

A full reading of the second set of interrogatories makes clear that defendants really do not seek information which they have not already obtained before. Rather, they seek to harass plaintiff and their set of interrogatories is improper.

It is submitted that the motion should be denied.

Sworn to before me this

21st day of August, 1975.

MILDRED B. HONIG
NOTARY PUBLIC, State of New York
No. 41-1550351 Queens County
Certificate filed in New York County
Term Expires March 30, 19[illegible]

REPORT AND RECOMMENDATION OF
MAGISTRATE GOETTEL, DATED
SEPTEMBER 5, 1975

Same Title

Defendants have moved under Rule 37 for sanctions because of plaintiff's incomplete answers to the second set of interrogatories.

The underlying action is based upon alleged violations of the Securities and Exchange Act because defendants traded in put and call options without prior registration. The essential issue in the action is whether such options require independent registration. (The underlying stock had been registered.)

Plaintiffs seek to have the suit designated as a class action, and the interrogatories address themselves to the class determination issues and the requirements of Rule 23(b)(3). In exploring the request for class status, the defendants have sought to discover the factual bases of the proposed representative's claim, the events leading to his decision to institute the action (solicitation), the amount

plaintiff is willing to expend in litigation, fee and disbursement arrangements with counsel (maintenance) and the class characteristics.

Defendants contend the information sought is relevant to both "manageability" and the adequacy of representation of the class which depends, in part, upon plaintiff's ability to bear notice and other litigation costs. Plaintiff counters that the information is irrelevant and that some requests violate the attorney-client privilege.

Initially it can be noted that defendants' requested sanction of dismissal of the entire action, or striking of the class demand, is inappropriate. While there has been delay, plaintiff has answered the first set of interrogatories and the proposed class representative has been deposed. Plaintiff's conduct has not even approached the complete disregard for discovery procedures which would justify dismissal. Flaks v. Koegel, 504 F.2d 702, (2d Cir. 1974). However, continued delay could reflect adversely upon plaintiff's ability to adequately represent the class.

Certain mundane objections were disposed of at

argument* but the issue of inquiry into the representative plaintiff's financial ability and the privilege question require some detailed consideration.

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*The particulars of the individual's claim and the typicality of claims among potential class members are the threshold inquiries of any class action. Plaintiff agreed at oral argument to furnish further answers to interrogatories directed to these issues.

Adequate Representation

Several interrogatories concern the extent of th class representative's financial resources and his willing ness to expend them litigating this suit. The extent of available resources interplays with, among other things, class size and type of claims to determine the overall eco manageability which may or may not "render the class actio format inappropriate for a particular suit." Eisen v. Carl & Jacquelin, 417 U.S. 156, 164 (1974). Its relevance is beyond doubt since class certifications have been withdrawn where a court has not been satisfied that sufficient resour were available. See National Auto Brokers Corp. v. General

Motors, 376 F.Supp. 620, 636-38 (S.D.N.Y. 1974) where certification was withdrawn in part because the representative's financial position had become "precarious".

Courts which have considered the question presented by detailed discovery requests directed to plaintiff's assets have by no means reached a consensus. Research has uncovered only one Circuit opinion on this issue, Sanderson v. Winner, 507 F.2d 477 (10th Cir. 1974), cert. denied 43 U.S.L.W. 3551 (1975). There the court felt that detailed discovery of plaintiff's means was unwarranted and limited discovery to plaintiff's ability to bear notice costs:

> "Ordinarily courts do not inquire into the financial responsibility of litigants. We generally eschew the question whether litigants are rich or poor. Instead, we address ourselves to the merits of the litigation. We recognize that the class action is unique and we see the necessity for the court to be satisfied that the plaintiff or plaintiffs can pay the notice costs, and we also agree fully with the Court's ruling in Eisen that due process requires decent notice. But we do not read Eisen as creating a presumption against finding a class action." 507 F.2d at 480.

Other cases have allowed broader discovery recognizing the "heavy responsibility" upon the representative a the affirmative duty of the court to see that class interest are protected. Class litigation should not be commenced wit the latent hope that absent class members will contribute to expenses. Ralston v. Volkswagenwerk, A.G., 61 F.R.D. 427, 434 (W.D.Mo. 173). For these reasons, in some instances, discovery has been broadened to include within its scope th plaintiff's ability to bear expected litigation expenses. Amherst Leasing Corp. v. Emhart Corp., 65 F.R.D. 121 (D. Con 1974), the court felt that Eisen, supra, tacitly approved discovery relating to plaintiff's financial ability and wil ness to finance the suit. While the cases were not report I have been involved in a couple of cases in this district that have allowed such inquiry.

Of course, the size of the class is almost directl proportionate to the cost of the suit. Thus a plaintiff wil have a relatively light burden in showing adequate resources

when the class is small. Plaintiff currently estimates the class size to be "in excess of 7500". (See Plaintiff's answer to interrogatory 23, appendix A to defendant's Notice of Motion, at p. 12). However, an inherent ambiguity exists whenever a number is defined as "in excess" of another. In fact, the composition of the class, which is a hotly disputed issue between the parties, will greatly affect its size. (Plaintiff contends he represents all persons who bought options on any stock from these defendants, and defendants maintain he can represent only those who purchased options on the same stock.) Regardless of the size of the class, defendants have an interest in plaintiff's solvency since large costs can accrue in this class action and a successful defendant will be seeking to recover its costs. If defendants were to move to compel the posting of a bond for costs, plaintiff would surely respond that (inter alia) none was necessary since he had the requisite financial resources to pay a judgment for costs. In that circumstance, the pending inquiries would obviously be necessary. Consequently, despite the strong holding of the Tenth Circuit to

the contrary in Sanderson v. Winner, I recommend that the interrogatories concerning financial solvency be answered. However, tax records need not be produced at this time since their quasi-privileged nature should be respected absent a strong showing of need. Federal Savings and Loan Ins. Co. v Krueger, 55 F.R.D. 512 (N.D.Ill. 1972).

Of course, the foregoing discussion does not take into consideration the resources that might be available through advances of costs by plaintiff's attorney. That issue will be considered next.

Maintenance and Manageability

It is pointless to discuss the relevancy of questions concerning fee arrangements and plaintiff's awareness of his ultimate responsibility for them, without admitting that the discussion, in fact, involves issues of champerty and maintenance. While respecting the real ethical considerations thus raised, undue emphasis upon them can have an anomalous result in a class action setting. The class action vehicle was created, in part, due to a desire to provide a

forum for numerous small claimants. Judge Frankel, in stating a conversation with the Reporter to the Advisory Committee on Civil Rules stated:

> "The reasoning [of Rule 23's notice requirements] relates to the fundamental conception ... of the class action's 'historic mission of taking care of the smaller guy'." M. Frankel, "Amended Rule 23 From A Judge's Point of View," 32 Antitrust Bull. 295, 299 (1966).

Thus, a court can be faced with an almost classic "Catch 22" situation: a plaintiff with a claim too small to justify individual litigation who must still theoretically be responsible for the expense of litigating the claims of the entire class. Of course, in reality, most day to day costs are advanced by the attorney who, in most contingent fee class litigations, has a prospective recovery hundreds or even thousands times the size of the nominal plaintiff.*

The ethics of advancement of disbursements are set forth in Canon 5, Disciplinary Rule 5-103(b) of the Code

of Professional Responsibility which provides:

> "While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and cost of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses." (emphasis added).

The countervailing policy in favor of contingent fees is to provide legal services to a claimant who might otherwise be foreclosed from litigation. The interplay between the two considerations was extensively discussed in P.D.Q. Inc. of Miami v. Nissan Motor Corp. in U.S.A., 61 F.R.D. 322 (S.D. Fla. 1973). There, broad discovery was permitted which revealed plaintiffs' limited means and lack of awareness of their ultimate liability. The court, troubled by a class numbering over 600,000, watched as disbursements advanced by counsel quickly outstripped plaintiffs' ability to repay. The knowledge that the attorney had and would be advancing large sums with no realistic chance of reimburse-

ment if the case were not successful prompted the court to conclude:

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*Plaintiff's counsel in this action acknowledges having a contingent fee arrangement.

> "When the considerations of Disciplinary Rule 5-103(b) are coupled with the acknowledged desirability of private antitrust enforcement, it seems clear that an attorney representing a potential plaintiff may ethically advance the costs of litigation subject of course to the requirement that the plaintiff remain ultimate liable ....
>
> When the costs so advanced include the amount necessary to effect notice consistent with the standards of due process, however, the amount that the client becomes ultimately responsible for can easily outstrip any funds theoretically available for reimbursement." 61 F.R.D. at 380.

The court's response was to declare a more economically manageable sub-class.

Most courts agree "that unethical conduct by plaintiff's counsel may impair his ability to adequately represent the class." See Sayre v. Abraham Lincoln Federal Savings & Loan Assoc., 65 F.R.D. 379 (E.D.Pa. 1974) and cases cited therein. (But see Kronenberg v. Hotel Governor Clinton, Inc

281 F.Supp. 622 (S.D.N.Y. 1968)). This may be true even where the unethical conduct has enhanced rather than prejudi the interests of the class. However, when class certificati is withdrawn upon this ground, the court has usually indicat that the professional performance of the lawyer has been inadequate. See, e.g., Korn v. Franchard, 456 F.2d 1206 (2d Cir. 1972); Taub v. Glickman, 14 F.R. Serv.2d 847 (S.D.N.Y. 1970). The court in Stavrides v. Mellon National Bank, 60 F.R.D. 635 (W.D.Pa. 1973) allowed detailed inquiry into all these aspects.

The touchstone of any case in this area is that the particular class on whose behalf the suit is brought determines the extent to which discovery is relevant. As noted above, class composition is still an issue. Moreover, having concluded that ethical considerations are relevant to the class issue of adequacy of representation, it is necessary to set some discovery guidelines. It is proper to question the representative on the amount he is willing to pay and his awareness of ultimate responsibility. Where, as here,

the attorney may advance funds, an assurance on his part that he is willing and able to continue doing so is also called for. However, if the court should determine that the composition of the class should be limited to purchasers of option in a single security, it may be apparent that litigation costs will not outstrip the plaintiff's theoretical ability to pay and the inquiry will cease to be relevant.

While the conflicting policies discussed above have created a situation where the ultimate answer controls the amount of discovery necessary to arrive at it, cooperation among the attorneys can act to avoid collision of interests at this time. If absolutely necessary, the motion could be taken in two steps; the first to determine class composition and, therefore, size, and the second, if the court approves a large class, concerned with financial ability.

Solicitation

Much of what has already been said concerning the

ethical considerations which inhere to a class action, applies with equal force to the issue of solicitation. However, Rule 26 protects privileged matter from discovery. Thus, while defendants may properly inquire into events leading to plaintiff's instituting suit, his knowledge, if any, of the involvement of other class members, the questions may not seek to compel communications with counsel. Sayre, sup at 386. See Amherst Leasing Corp., supra for an extended analysis of relevant cases which concluded that discovery was foreclosed on the basis of relevance and, generally, Magida v. Continental Can Co., 12 F.R.D. 74 (S.D.N.Y. 1951); Schwartz v. Broadcast Music, Inc., 16 F.R.D. 31 (S.D.N.Y. 1954) on this privilege issue.

Conclusion

In summary, defendants may discover all physical characteristics of the class and propound general questions relating to plaintiff's finances, his willingness to expend them and his awareness of his ultimate liability. Once the class is sufficiently defined, the notice and discovery costs will become more easily ascertainable and the need for de-

tailed inquiry into plaintiff's ability to bear them can be determined. Defendants can inquire into the circumstances under which plaintiff came to institute the present action, so long as discussions with counsel are not divulged.

Respectfully,

Gerard L. Goettel

Gerard L. Goettel
United States Magistrate

Dated: New York, N.Y.,
September 5, 1975.

MEMO ORDER OF THE DISTRICT COURT
(PIERCE, D.J.), DATED SEPTEMBER 23,1975

Same title

ENDORSEMENT ORDER

Defendants' motion pursuant to Rule 37 was referred to Magistrate Goettel by order of this Court, and the Magistrate's Report was received on September 5, 1975. The recommendations of the Magistrate are adopted. The Court will decide the issue as to the size of the class once sufficient discovery has been accomplished so that the issue can be presented.

So ordered.

LAURENCE W. PIERCE
U.S.D.J.

Dated: New York, N.Y.
Sept. 23, 1975

FILED
SEP 23 1975

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND CLASS DETERMINATION DATED SEPTEMBER 29,1975

Same Title

S I R S :

PLEASE TAKE NOTICE that, upon the annexed affidavit of IRVING BIZAR, sworn to September 29, 1975, the pleadings and prior proceedings herein, the undersigned will move this Court on October 14, 1975, or as soon thereafter as counsel can be heard, for an order (1) pursuant to FRCP Rule 23 and Rule 11A of the Civil Rules of this Court, determining this action to be a class action and (2) pursuant to FRCP Rule 56(a), granting partial summary judgment to plaintiff and the class against all defendants, declaring said defendants to be liable to plaintiff and the class, and for such other and further relief as the Court may deem just and proper. On said return date, this motion will be submitted.

Dated: September 29,1975.

A. ARNOLD GERSHON
DEMOV, MORRIS, LEVIN & SHEIN

By _____
A Member of the Firm

Attorneys for Plaintiff
40 West 57th Street
New York, New York 10019

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND CLASS DETERMINATION, DATED SEPTEMBER 23,1975

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

IRVING BIZAR, being duly sworn, deposes and says:

I am a member of the Bar of this Court and of the firm of Demov, Morris, Levin & Shein, co-counsel with A. Arnold Gershon, for the above named plaintiff. I am familiar with the facts and prior proceedings herein and make this affidavit in support of the annexed application for (1) class determination pursuant to Rule 23(b) FRCP and (2) partial summary judgment on the issue of liability against defendant pursuant to Rule 56 FRCP.

As will be shown below, both parts of the application should be granted.

Nature of the Proceedings

This is a class action brought on behalf of those persons who purchased call options from the defendants during the period of November 29, 1971 through November 29,1972

upon the grounds that such options were securities which should should have been registered under the Securities Act of 1933, and they were not.

At the outset, it would be helpful if certain definitions were set forth.

Call Option-is an option contract giving the buyer the right to purchase the stock and usually contains an expiration date, i.e., a date on which the option expires; the last day on which an option can be exercised.

Writer- The person who writes grants or issues a call option, giving the buyer of the option the right to demand that the writer sell a specified number of shares at a fixed price within a specified period. The writer receives a certain sum of money called a "premium."

Put and Call Dealer- The put and call dealer,generally a member of the Put and Call Brokers and Dealers Association, negotiates the price of the option with both the buyer and the seller and generally makes his profit through the difference be-

tween the two prices. The dealer has a standard put and call opti from which is filled out by the writer and is endorsed by a member firm of the New York Stock Exchange.

At bar, the three defendants performed the functions described above in selling a call option to the plaintiff.

Generally, such purchases are made through a broker who will make the contacts with the put and call dealer, or with other brokers to find a writer and endorser. Sometimes a writer will initiate contact with the brokers to find a customer for options he wishes to write.

At bar, plaintiff purchased a call option on 100 shares of Cooper Tire stock from defendant J.C. Bradford. Defendant Reynolds endorsed the option written by its customer, one, William W. Shaw. Mr. Shaw had been a customer of Reynolds for more than 17 months and was a substantial writer of options. Reynolds endorsed the call options.

Vogel-Lorber was the put and call broker - dealer in the transaction.

Since all call options possess the same characteristics (other than the underlying security, the price for exercise and the specified period within which such exercise can occur) it is our position that all call options sold by these defendants and unexercised are involved in this litigation; these call options should have been registered under the Securiti Act of 1933 since they are securities.

The Class Motion

This action meets the requirements of class action under Rule 23 FRCP.

1. The class is so numerous that joinder of all members is impracticable.

There can be no dispute but that the class is numerous. The report on put and call options dated August 1961 by the Securities and Exchange Commission, Division of Trading and Exchanges, disclosed that during the month of June 1959,

408,950 call options were sold and that during the year 1960 there was an average weekly sale of call options of 218. The report further disclosed that during the period of June 1959 through January 1960, approximately 43% of call options were exercised.

Since the time of that study, option activity has substantially increased. Our pretrial discovery disclosed that defendant Reynolds, alone, during the year involved herein, had between 50,000 to 60,000 transactions. We were informed that under Reynold's record system each trade appears four times. Defendant Vogel-Lorber had 10,000 sales slips. Since the number of the trades involved the same person purchasing different call options, we have estimated the class as consisting of between 12,000 to 15,000 persons. While we cannot state at this time the precise number in the class, the defendant's records will disclose the exact number and the identities.

It is evident that the joinder of so large a number of persons as plaintiff would not be practicable.

2. The common questions of law and fact predominates over any individual question.

The common issues are whether call options are securities and whether they should be registered under the Securities Act of 1933. These questions apply to all call options, irrespective of the underlying security to which the option relates, the length of exercise time, the price of the option and its premium.

The issues of fact and law are thus common to the class and far outweigh any individual issues.

3. Plaintiff's claims are typical of the claims of the class.

All members of the class are, like plaintiff, purchasers of call options which were not exercised. Plaintiff has no interest adverse to the class; in fact, the relief he seeks is the same as for every other member of the class.

4. Plaintiff will fully and adequately protect the interests of the class.

Plaintiff intends to pursue this action vigorously.

He has already been deposed, journeying to this Court from Atlanta for that purpose. He has submitted answers to two sets of interrogatories. He has retained competent counsel. He is prepared to bear all costs attendant thereto. He has retained competent counsel. Mr. Gershon has been an attorney active in stockholder litigation, presently associated with Abraham L. Pomerantz. The competence and dependability of our firm as counsel to plaintiff in actions of this nature has been recognized. We have been appointed lead or general counsel in other securities class actions:

In Re Revenue Properties Securities Actions, MDL No.32 United States District Court, District of Massachusetts;

In Re Caesars Palace Securities Actions, MDL No. 110, United States District Court, Southern District of New York;

Lerman v. Tenney, United States District Court, Southern District of New York; and

Zolotnitsky v. Yablok, United States District Court, Southern District of New York.

5. A class action is superior to any other available method for the fair and efficient adjudication of the controversy.

For any individual member of the class to retain competent counsel to litigate the important issues raised herein, may entail costs and expenses far in excess of the class member's individual interests. Indeed, the interest of any one individual may be quite small. It would undoubtedly be uneconomic for each class member to pursue his separate remedy. For example, plaintiff purchased the call option of Cooper Tire for only $278.75. Thus, if the rights of the class members are not vindicated in a class action, a wrong would be left unremedied. On the other hand, if the interests of each class member were large enough to stimulate individual actions, a multiplicity of litigation might result unless this suit would proceed as a class action.

Moreover, if individual actions are brought for each member of the class, the Court and the litigant would be inundated with numerous litigations causing unnecessary waste,

duplication and would place an intolerable burden on the judiciary. In fact, there would also be the spectre of possible inconsistent decisions raising questions of a repeated nature for an appellate court. Thus, the only practical way to resolve the issues raised herein is by class treatment.

As the defendants have their principal places of business and have conducted their activities in this district, all of the relevant records are here. Management of this class action, since its involves two simple issues, would present fewer problems than is normally present in a typical class action litigation.

Motion for Partial Summary Judgment

Plaintiff also moves for partial summary judgment on the issue of liability as against the defendants.

The issues on this motion are simple and there can be no dispute of facts.

Throughout the relevant period, there were numerous advertisements and solicitations encouraging the public to purchase options. Plaintiff purchased a call option from defendant J.C. Bradford. The option was written by William R. Shaw, a customer of 18 months of defendant Reynolds, and a writer of substantial numbers of options during that year. He had presumably earned a substantial amount of income from such activity. Vogel-Lorber was the put and call dealer who brought the buyer and the seller together and Reynolds endorsed the option.

The call options sold during the relevant year were not registered under the Securities Act of 1933.

As the accompanying memorandum shows, the call options are securities and should have been registered.

Wherefore, it is respectfully requested that plaintiff's motion be granted in all respects.

Dorsey & Bryan

PLAINTIFF'S MOTION AND SUMMARY JUDGMENT AND CLASS DETERMINATION, DATED SEPTEMBER 23, 1975

Same Title

Rule 9(g) Statement

1. Plaintiff purchased a call option on shares of stock of Cooper Tire and Rubber on January 20, 1972 for $278.75 which call option expired, unexercised on July 24, 1972.

2. Defendants sold, either as broker, issuer or endorser, call options on shares of common stock in the period November 29, 1971 to November 29, 1972.

3. Said call options were not registered for sale with the Securities Exchange Commission under the Securities Act of 1933.

Dated: September 29, 1975.

A. ARNOLD GERSHON
DEMOV, MORRIS, LEVIN & SHEIN

Attorneys for Plaintiff.

AFFIDAVIT OF WILLIAM R. NORFOLK
DATED MARCH 5, 1976

Same Title

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WILLIAM R. NORFOLK, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and of the firm of Sullivan & Cromwell, attorneys for defendant Reynolds Securities, Inc. I submit this affidavit in opposition to plaintiff's pending motions for (a) a class-action determination pursuant to Fed. R. Civ. P. 23 and Rule 11A of the Civil Rules of this Court; and (b) partial summary judgment pursuant to Fed. R. Civ. P. 56(a).

2. The defendants in this action have consistently taken the position that plaintiff's pending motions are patently without merit -- that the purported class fails to satisfy any of the requirements of Fed. R. Civ. P. 23 and that disputed issues of fact now exist with respect to the issues upon which plaintiff seeks summary judgment -- and that, in any event, the summary judgment motion is premature, not only because discovery has not been completed

with respect to those issues, but also because that motion cannot properly be decided until after it is determined whether this action is or is not a class action (and thus it is determined who will be bound by a determination of that motion).

3. However, the defendants submit that the pending motions can and should be denied without reaching the foregoing substantive issues, because of plaintiff's willful and continued refusal to comply with this Court's discovery orders and to submit to discovery by the defendants. As summarized herein, for over seventeen months plaintiff has repeatedly ignored his obligation as a litigant, repeatedly defaulting on his obligation to afford defendants pretrial discovery; ignoring deadlines established by the Magistrate; and, most recently, intentionally violating orders entered by the Magistrate and this Court. For the reasons set forth in the accompanying memorandum of law, defendants submit that plaintiff's persistent irresponsibility in this action and his willful violation of this Court's order, amply justifies, if not compels, the denial of plaintiff's pending motions.

AFFIDAVIT OF WILLIAM R. NORFOLK
DATED MARCH 5, 1976

The History of Plaintiff's Defaults on his Obligations as a Litigant

4. This action was commenced in late 1972. After preliminary discovery, the named defendants with whom plaintiff had no dealings whatsoever moved for summary judgment against plaintiff's complaint that indiscriminately sought to embroil in litigation those numerous broker-dealers and put-and-call brokers against whom plaintiff had no claim. In a Memorandum Decision, dated September 30, 1974, this Court granted those summary judgment motions, holding that plaintiff had no standing to sue, or to represent a class of persons suing, companies having no connection whatsoever with the one call option (on shares of Cooper Tire & Rubber Co. common stock), purchased by plaintiff from defendant J.C. Bradford & Co., which is the subject of this action. Plaintiff did not appeal that decision.

5. Thereafter, this action was assigned by this Court to Magistrate Goettel to supervise further pretrial discovery. Magistrate Goettel persistently endeavored to establish deadlines for the completion of discovery and determination of the class action motion -- deadlines which plaintiff repeatedly sought to have extended or simply ignored.

AFFIDAVIT OF WILLIAM R. NORFOLK
DATED MARCH 5, 1976

6. ON January 2, 1975, in accordance with a time schedule established by Magistrate Goettel at a pretrial conference on November 18, 1974, defendants served upon plaintiff a set of interrogatories and a request for production of documents which related to issues relevant to the determination of the propriety of the purported class plaintiff seeks to represent in this action. Plaintiff neither sought nor received any extension of time within which to respond to those discovery requests, yet did not serve objections or answers to those requests for over eight months.

7. Shortly before defendants filed a motion pursuant to Fed. R.Civ. P. 37 for sanctions because of plaintiff's failure to submit to discovery, plaintiff's attorneys on August 4, 1975 served purported answers and objections to defendants' January 2 interrogatories and document request. Despite the fact that plaintiff by then had waived any right to object to those discovery requests, plaintiff objected to over one-half of those requests and, for the most part, "answered" only those questions which he could reply to with one-word denials. Because defendants believed that those responses by plaintiff were not only untimely, but so

clearly inadequate as to constitute a refusal to answer, defendants on August 18, 1975 served a motion under Fed. R. Civ. P. 37 seeking an order dismissing the complaint, or dismissing the class action allegations therein, or other appropriate sanctions. The unresponsiveness of plaintiff's responses to defendants' interrogatories and document request is documented in defendants' Rule 37 motion, and the accompanying memorandum of law and affidavit of Thomas J. Mullaney, Esq., both dated August 18, 1975.

8. In a "Report and Recommendation", dated September 5, 1975 (the "Report"), Magistrate Goettel denied defendants' motion for sanctions against plaintiff, but granted defendants request for further discovery relating to the class action issues (a copy of the Report is annexed hereto as Exhibit A). Magistrate Goettel also stated that, in light of plaintiff's prior delay in meeting his discovery obligations, "continued delay [by plaintiff] could reflect adversely upon plaintiff's ability to adequately represent the class." (See Report, p. 2)

9. In granting defendants further discovery, Magistrate Goettel held that plaintiff should provide further answers to defendants' interrogatories and document request

(within certain limitations specified in that Report), relating to the following general categories of information which are clearly relevant to a determination of the propriety of the class which plaintiff seeks to represent:

(a) plaintiff's financial condition and solvency, and thus his ability to bear the cost of the litigation and to reimburse defendants for their costs if defendants prevail in the action (see Report, p. 5);

(b) plaintiff's willingness to pay the expenses incurred in the litigation and his awareness of his ultimate responsibility for those expenses, and the defendants' costs if they prevail (see Report, p. 9); and

(c) the circumstances surrounding and events leading to the institution of the action, including the existence or non-existence of solicitation by counsel, and plaintiff's knowledge of any communications with, or other involvement in the action by, other possible members of the purported class (see Report, p. 10).

10. In addition to the foregoing subjects of required supplemental interrogatory answers, Magistrate Goettel also noted in the Report that "[p]laintiff agreed at oral argument to furnish further answers to interrogatories

directed to" the issues of the "particulars of the individual's claim and the typicality of claims among potential class members." (See Report, p. 2)

11. In its "Endorsement Order", dated September 23, 1975, this Court approved and adopted the recommendations in Magistrate Goettel's Report (a copy of that Order is annexed hereto as Exhibit B). In that Order this Court also advised the parties that "[t]he Court will decide the issue as to the size of the class once sufficient discovery has been accomplished so that the issue can be presented."

12. On September 30, 1975, plaintiff served the instant class action and summary judgment motions. Consistent with plaintiff's previous disregard for deadlines set by Magistrate Goettel, plaintiff served the class action motion over one month after the deadline for filing such a motion set by the Magistrate. Moreover, plaintiff served that motion despite the fact that plaintiff had not provided defendants with the supplemental interrogatory answers which plaintiff had been ordered by this Court to furnish to defendants -- thus refusing to provide defendants with information which both the Magistrate and this Court had previously held

was essential for the determination of the class-action motion.

13. As of the date of this affidavit, plaintiff has still not provided defendants with those supplemental interrogatory answers, and, in fact, plaintiff's attorneys have advised affiant that plaintiff (at least at this time) will not provide those supplemental answers despite this Court's Order. (See also infra ¶¶ 14-17)

Plaintiff's Continuing Violation of this Court's Order and the Consequent Adjournment of the Pending Motions

14. On October 14, 1975, I telephoned A. Arnold Gershon, Esq., co-counsel for plaintiff, and told him that since plaintiff had not yet served the supplemental interrogatory answers ordered by this Court, plaintiff's pending motions could not properly be brought on for determination by the Court. I told Mr. Gershon that in accordance with this Court's September 23 Order defendants could not be compelled to respond to the motions until plaintiff had satisfied that discovery obligation, and that, in any event, the information to be provided in those supplemental answers was essential in order for defendants to respond fully to the class-action motion. Mr. Gershon told me that plaintiff's counsel had

not yet decided whether plaintiff would comply with the Court's September 23 Order, or instead would seek appellate review of that Order (by means of a mandamus petition). I thereupon suggested that the motions be adjourned for thirty days in order to give plaintiff's counsel more time to decide what they would do, and Mr. Gershon agreed to that proposal. The substance of that telephone conversation with Mr. Gershon was summarized in my letter to him, dated October 14, 1975, transmitting a stipulation adjourning the motion to November 14, and a copy of that letter is annexed hereto as Exhibit C.

15. Thereafter, plaintiff did not serve the required supplemental interrogatory answers or seek appellate review of the September 23 Order, and the return date of plaintiff's pending motions consequently was periodically adjourned by stipulation from November 14 to December 22, 1975; then to January 30, 1976; and eventually to March 5, 1976. During the course of my various telephone conversations with Mr. Gershon in connection with those adjournments, Mr. Gershon repeatedly advised me that plaintiff's counsel had decided that plaintiff would not voluntarily comply with this Court's September 23 Order, but rather would seek to obtain appellate

review of that Order. I consequently agreed to adjourn the motions further in order to provide plaintiff's counsel with additional time within which to prepare the mandamus petition. As each of those various stipulations expired, Mr. Gershon told me that plaintiff's counsel had not yet had time to prepare and file the mandamus petition, and on each occasion I agreed as a matter of courtesy to yet another adjournment of the motions.

16. On February 27, 1976, I was informed that this Court had advised James B. May, Esq. of Brown, Wood, Ivey, Mitchell & Petty, attorneys for defendant J. C. Bradford & Co., that the Court would not approve any further adjournment of the instant motions. Since plaintiff had still not served the mandamus petition or the supplemental interrogatory answers, commencing February 27, Thomas J. Mullaney, Esq., of Brown, Wood, Ivey, Mitchell & Petty, and I both attempted to telephone Mr. Gershon to discuss with him what plaintiff intended to do with respect to plaintiff's default on his obligation to provide defendants with those supplemental interrogatory answers.

17. On March 4, 1976, Irving Bizar, Esq., co-counsel for plaintiff, telephoned me and advised me that he and Mr. Gershon had decided that they did not want to file

the mandamus petition at this time, but that plaintiff nevertheless remained unwilling to provide voluntarily the supplemental interrogatory answers ordered by this Court. I told Mr. Bizar that, in light of the plaintiff's position, defendant had no alternative but to seek the denial or dismissal of the pending motions on the ground that plaintiff had willfully violated this Court's Order and persistently defaulted on his obligations to provide pretrial discovery.

William R. Norfolk

Sworn to before me this
5th day of March, 1976.

George A. Jochake
Notary Public

GEORGE A. JOCHAKE
Notary Public, State of New York
Residing in Nassau County
Nassau Co. Clk's No. 30-3526250
Certificate Filed in
New York Co. Clk's Office
Commission Expires March 30, 1977

AFFIDAVIT OF WILLIAM R. NORFOLK
DATED MARCH 5,1976

EXHIBIT A - REPORT AND RECOMMENDATION OF MAGISTRATE GOETAL

(See A 164).

AFFIDAVIT OF WILLIAM R. NORFOLK
DATED MARCH 5, 1976

EXHIBIT B -- INDORSEMENT ORDER, DATED SEPTEMBER 23, 1975.

(See A 178)

AFFIDAVIT OF WILLIAM R. NORFOLK
DATED MARCH 5, 1976

EXHIBIT C

October 14, 1975

A. Arnold Gershon, Esq.
Thirty-sixth Floor,
295 Madison Avenue,
New York, New York 10017.

Re: Leonard v. Reynolds Securities, Inc., et al.

Dear Arnold:

In accordance with our agreement during our telephone conversation this morning, I enclose a stipulation adjourning for thirty days plaintiff's class action and partial summary judgment motions.

As we discussed during our telephone conversation, we believe that we are entitled to receive plaintiff's supplemental interrogatory answers before we file responsive papers to plaintiff's motions, and this adjournment, in part, is for the purpose of affording you sufficient time to prepare and serve these answers, or to seek appellate review of the decision compelling those supplemental answers. If you decide that you need additional time with respect thereto, we of course would be willing to make a reasonable accommodation.

Very truly yours,

William R. Norfolk

(Enclosure)

cc: H. G. Vogel, Esq.
Thomas J. Mullaney, Esq.

AFFIDAVIT OF IRVING BIZAR
DATED MARCH 15, 1976

SAME TITLE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

IRVING BIZAR being duly sworn, deposes and says:

This affidavit is submitted in reply to the affidavit of WILLIAM R. NORFOLK, purportedly submitted in support of an application by the defendants (though no notice of motion in accordance with the Federal Rules of Civil Procedure has been served) to dismiss the action for failure to comply with an order of this Court respecting answers to interrogatories. The defendants have submitted no response to our motion for summary judgment and class determination. As will be shown below, we have, in fact, complied with the order of this Court.

Indeed, the application arises out of the desire by Mr. Norfolk, as stated to me in his telephone conversation, to avoid having to respond at this time to the critical issue upon which all of the motions depend.

The crux of the dispute on the interrogatories is that defendants wish to know the financial resources of the plaintiff. Magistrate Goettel's opinion indicated that the problem could be resolved:

> "If absolutely necessary, the motion could be taken in two steps; the first to determine class composition and, therefore, size, and the second, if the court approves a large class, concerned with financial ability."

This Court confirmed Magistrate Goettel's opinion in language indicating that the issue of the size of the class was the dominant one.

That size depends upon a determination of which party's contention is correct. We contend that this action is brought on behalf of all persons who bought options on <u>any</u> stock from these defendants. Defendants claim that plaintiff can represent only those who purchased options on the <u>same</u> stock as he did, <u>viz</u>, Cooper Tire and Rubber. If defendants' contention is adopted, the class is too small to meet the requirements of Rule 23 (as our discovery revealed). On the other hand, if plaintiff's contention is adopted (which has been asserted from the moment the complaint was filed),

the size of the class is as stated in our moving papers. Hence, the threshold question must be resolved before numerosity and the other issues are determined.

be the only effective way to approach the question.

We did not adopt the procedure of seeking Appellate review in the Second Circuit because we were satisfied that the Second Circuit would have requested that we follow the procedure we did use.

Finally, it may be noted that, with the exception of financial information, much of the other information has been supplied to defendants either in plaintiff's answers to the first set of interrogatories, or on his deposition, or on his motion for class determination.

Until there is a determination of the initial issue, plaintiff should not be required to set forth his financial resources.

In view of all of the foregoing, it is respectfully requested that defendants' application be denied and plaintiff's motion for summary judgment and class determination be granted.

Irving Bizar

Sworn to before me this
15th day of March, 1976.

[illegible]
Notary Public
No. 41-[illegible]
Certificate filed in New York County
Term Expires March 30, 19[illegible]

AFFIDAVIT OF WILLIAM R. NORFOLK
DATED MARCH 23, 1976

SAME TITLE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WILLIAM R. NORFOLK, being duly sworn, deposes and says:

1. The affidavit of Irving Bizar, Esq., sworn to on March 15, 1976 (the "Bizar Affidavit"), in response to my affidavit of March 5, 1976 (my "March 5 Affidavit"), misstates the substance of my telephone conversations with him and the bases upon which the defendants now seek the denial of plaintiff's pending motions for a class action determination and for partial summary judgment ("plaintiff's pending motions"). In order to clarify the record, therefore, this brief response to Mr. Bizar's affidavit is necessary.

2. Mr. Bizar asserts that the "defendants have submitted no response" to plaintiff's pending motions. (Bizar Affidavit, p. 1) In fact, however as expressly stated in those papers, both my initial affidavit and the

accompanying memorandum of law were submitted in opposition to plaintiff's pending motions. Defendants submit that those motions can and should be denied solely on the basis of plaintiff's continued, willful refusal to provide discovery in violation of an order of the Magistrate and this Court -- discovery which has been held to be essential to enable the defendants to respond fully to those pending motions. Defendants have also suggested that plaintiff's intentional violation of this Court's discovery order would justify, and this Court has the inherent power to order (see Fed. R. Civ. P. 37(b)), the dismissal of plaintiff's complaint. See "Defendants' Memorandum in Opposition to Plaintiff's Motions Pursuant to Fed. R. Civ. P. 23 and 56", dated March 5, 1976, pp. 4-8. Contrary to Mr. Bizar's assertion, therefore, defendants have responded to and opposed plaintiff's motions, and the separate motion by the defendants suggested by Mr. Bizar is obviously unnecessary, as well as superfluous.

3. Mr. Bizar asserts that during a telephone conversation with him I stated that the defendants were seeking "to avoid having to respond at this time to the critical issues upon which all of the motions depend."

(Bizar Affidavit, p. 1) No such statement -- or anything approximating it -- was ever made by me to Mr. Bizar, or to his co-counsel Mr. Gershon.

(a) On the contrary, I have consistently advised plaintiff's counsel that under this Court's Order of September 23, 1975, the defendants could not properly be compelled to respond to plaintiff's pending motions until plaintiff had provided defendants with the additional discovery which had been ordered. At no time prior to March 4, 1976, did Mr. Bizar or Mr. Gershon ever express to me any disagreement with defendants' interpretation of that Order. (See Norfolk March 5 Affidavit, ¶¶ 14-17) In fact, Mr. Gershon repeatedly stated that plaintiff's counsel intended to seek to avoid having to furnish that supplemental discovery by filing a mandamus petition with respect to that Order prior to the adjourned return date for those motions. (See Norfolk March 5 Affidavit, ¶¶ 14-15)

(b) During my March 4 telephone conversation with Mr. Bizar, I told him that his proposal for a piecemeal determination of the class-action issues -- whereunder consideration of plaintiff's ability to represent adequately

any class and the discovery required under this Court's September 23 Order would be deferred -- had already been rejected by the Magistrate and this Court, and that his proposal merely constituted an attempt by plaintiff to reargue his opposition to that Order. I also told Mr. Bizar that I believed that such a piecemeal determination of the class-action issues was unjustifiable under Fed. R. Civ. P. 23 and would be prejudicial to the rights of the defendants because: (i) the relevance of the information which plaintiff had been ordered to provide was not limited solely to the determination of whether plaintiff could satisfy the adequacy-of-representation requirements of Rule 23(a)(4); and (ii) in any event, the issues raised under that subsection of the Rule could not be separated from the other issues involved in the class action determination in this action.

4. In his March 15 affidavit, Mr. Bizar states that plaintiff's counsel "did not adopt the procedure of seeking [a]ppellate review in the Second Circuit because we were satisfied that the Second Circuit would have requested that we follow the procedure we did use."

(Bizar Affidavit, p. 3) Mr. Bizar's present explanation for why plaintiff decided not to file a mandamus petition is inconsistent with Mr. Gershon's repeated statements to me, over a period of months, that plaintiff's counsel would promptly file such a mandamus petition, and with Mr. Gershon's repeated agreement that plaintiff's pending motions should be adjourned in order to permit plaintiff's counsel to file that petition before the return date of these motions (whereupon, it was contemplated, the motions could be adjourned until after the Second Circuit had ruled on that petition). (See Norfolk March 5 Affidavit, ¶¶ 14-15)

5. Similarly inconsistent with the position which Mr. Gershon consistently took for over five months, is Mr. Bizar's assertion that plaintiff's counsel can now discern from the "language" in the Magistrate's opinion and this Court's order an "indication" that the Court therein agreed to conduct a piecemeal determination of the class-action issues and plaintiff could thus defer compliance with the September 23 Order until some unspecified later date. (Bizar Affidavit, p. 2) For the reason set forth in the memorandum submitted with this reply affidavit, defendants submit that such an interpretation of this Court's September 23 Order is also

inconsistent with the provisions of that Order and of the Magistrate's decision, and with the prior proceedings in this action. Plaintiff's counsel's belated re-interpretation of the September 23 Order thus appears to be merely a last-minute attempt to extricate their client from the consequences of his decision to ignore and violate that discovery order.

6. Mr. Bizar's second proffered rationalization for plaintiff's violation of this Court's September 23 Order -- that "much of the other information [other than "financial information"] has been supplied to defendants either in plaintiff's answers to the first set of interrogatories, or in his deposition, or in his motion for class determination" (Bizar Affidavit, p. 3) -- is similarly inconsistent with the facts and prior proceedings in this action. That identical argument was made by the plaintiff in opposition to the defendants' motion which resulted in the September 23 Order, and that argument was rejected by the Magistrate and this Court in ordering plaintiff to supply supplemental discovery to the defendants. Plaintiff thus is merely seeking to reargue a motion which he has already lost, and such an attempt obviously

does not excuse or justify plaintiff's violation of the discovery order.

7. Moreover, plaintiff, in fact, has not provided defendants with information relating to such areas of supplemental discovery covered by the September 23 Order as:

(a) information concerning the circumstances surrounding the institution of the action, including the existence or non-existence of solicitation by counsel (see Norfolk March 5 Affidavit, ¶ 9(c));

(b) additional information concerning the precise nature of plaintiff's claims, and the circumstances involved in his trading of call options (see Norfolk March 5 Affidavit, ¶ 10; Exhibit A, pp. 2, 10); or

(c) information concerning the factual bases -- as distinguished from self-serving, conclusory assertions of counsel -- for plaintiff's contentions that his claim is "typical" of the claims of other purchasers of call options (e.g., those who purchase different options at different times or those who purchased privately rather than on the open market as did plaintiff); or that common

AFFIDAVIT OF WILLIAM R. NORFOLK
DATED MARCH 23, 1976

issues "predominate" over individual issues (e.g., what issues does plaintiff concede are individual issues and what is the factual basis for his assertion that purportedly "common issues" predominate) (see Norfolk March 5 Affidavit, ¶ 10, Exhibit A, p. 2, 10).

Plaintiff's refusal to comply with the September 23 Order thus has deprived defendants of information which the Magistrate and this Court have already determined defendants are entitled to receive in order to enable them to respond fully to the pending motions which plaintiff now seeks to have determined despite his non-compliance with that Order.

William R. Norfolk

Sworn to before me this
23rd day of March 1976.

Notary Public

Notary Public
Residing in Nassau County
Nassau Co. Clk's No. 30-3525250
Certificate Filed in
New York Co. Clk's Office
Commission Expires March 30, 1977

GEORGE A. SCHOLZE
Notary Public, State of New York
Residing in Nassau County
Nassau Co. Clk's No. 30-3525250
Certificate Filed in
New York Co. Clk's Office
Commission Expires March 30, 1977

MEMORANDUM OPINION OF DISTRICT COURT
(PIERCE, D.J.), DATED JUNE 21, 1976

Same Title

LAWRENCE W. PIERCE, D.J.

MEMORANDUM OPINION

Plaintiff's motion for class determination raises the question of whether the apparently wilful failure of his counsel to comply with a discovery order of this Court warrants the denial of the motion on the ground that plaintiff does not "fairly and adequately protect the interests of the class," as required by Rule 23(e)(4) Fed.R.Civ.P.

In late 1975,defendants moved pursuant to Rule 37 Fed. R.Civ.P. for an order directing plaintiff to respond to certain interrogatories addressed to the question of the adequacy of plaintiff's representation. More specifically, defendants sought to discover whether this motion was commenced through solicitation by counsel and whether plaintiff's counsel has engaged in maintenance of the action. On September 5, 1975, Magistrate Goettel, to whom the discovery matter had been referred, recommended that the defendants be allowed to

discover all physical characteristics of the alleged class and to propound general questions relating to plaintiff's finances, his willingness to expend them, and his awareness of his liability for the costs of motion. The Magistrate also recommended that defendants be allowed to inquire into the circumstances under which plaintiff came to institute this action, so long as conversations with counsel are not divulged.

On September 23, 1975, the Court adopted the report and recommendation of the Magistrate and directed that the class discovery be completed prior to the determination of the class motion. Thereafter the parties, with the consent of the Court, adjourned the return date of the class action motion four times, until March 5, 1976, the Court having marked the fourth extension "final."

In papers filed in opposition to the class motion, defendants state that plaintiff has failed to answer the class action interrogatories in violation of this Court's order of September 23, 1975. For that reason, defendants have not addressed the merits of the motion but have waged

that the motion should be denied for the wilful failure of plaintiff's counsel to comply with a discovery order of the Court. It appears that the failure to comply continues to date.

The Court has reexamined the issues raised by the "class"interrogatories and reaffirms its order that plaintiff must provide answers; questions concerning plaintiff's willingness to bear the costs of notice as well as inquiry into the ethical conduct of plaintiff's counsel are permissible matters for class discovery; see Temkin v. Kaysen, 69 F.R.D. 541 (S.D.N.Y.1976); Stavrides v. Mallon National Bank & Trust Co., 60 F.R.D.634, 636-37 (S.D.Pa.1973).

In order for plaintiff to satisfy the representation requirement of Rule 23(a)(4), his counsel must be "qualified, experienced and generally able to conduct the proposed litigation." Eisen v. Carlisle & Jacquelin, 397 F.2d 555 (2d Civ. 1968) (Eisen II). Here it is not disputed that plaintiff's counsel has experience in handling securities class actions;however, the performance of counsel in at

least one other case before this Court has been less than satisfactory, and in fact has been marked by unexcused delays as well as by errors in notices sent to the class; see Zolotnitzky v. Yablok, 67 Civ. 4185, final order entered March 10, 1976.

The fact that a given attorney has acted as a class representative in a number of securities class actions does not mean that he is qualified to represent a class in every such action regardless of his conduct in that case.

> "One accepting employment as counsel in a class action does not become a class representative through simple operation of the private enterprise system. Rather, both the class determination and designation of counsel as class representative come through judicial determinations, and the attorney so benefitted serves in something of a position of public trust." (Alpine Pharmacy, Inc. v. Chas. Pfizer & Co., 481 F.2d 1045, 1050 (2d Cir.) cert. denied, 414 U.S. 1092 (1973))

Plaintiff's ability to protect the interests of the class depends in part upon the quality of his counsel see Oxedine v. Williams, 509 F.2d 1405, 1407 (4th Civ. 1975) (per curiam). For instance, the failure of plaintiff's

counsel to make a class motion within the time required by the Local Rules may lead a court to conclude that the plaintiff cannot fairly and adequately protest the class interest; see Walker v. Columbia University, 62 F.R.D. 63 (S.D.N.Y. 1973) (McMahon, J.) If the pleadings and papers submitted by plaintiff's counsel are woefully inadequate, a finding of inadeequate representation may result in a refusal to certify a class; see Anderson v. Mooror,372 F.2d 747 (5th Cir.1967).

This action was commenced in 1972. The original class action motion was made in June of 1973. Aside from motion practice resulting in the grant of summary judgment to certain defendants in the fall of 1974, it appears that little other than the protracted dispute over class discovery has caused this matter to proceed at a snail's pace. Now, four years after the commencement of the action and three years after the making of the class motion, that issue is finally before the Court. Yet even now the question of class certification cannot be addressed on the merits due to the fact that plaintiff has failed to provide the discovery ordered by this Court nine months ago. Plaintiff

has never asked this Court to modify that discovery ruling, nor has plaintiff sought judicial relief from the ruling in any other fashion. Rather, plaintiff's counsel has for months done nothing. The Court concludes now that counsel's own conduct has erected a barrier to the certification of the class which he seeks.

The Court's authority to deny the class action motion in these circumstances flows not only from Rule 23(a)(4) but also from Rule 37(a) and (b), which allow the Court to impose appropriate sanctions upon the failure of a party to comply with a discovery order of the Court. While the conduct of the plaintiff does not appear to warrant the extreme sanction of dismissal of the complaint, see Flaks v. Koegel, 504 F.2d 702 (2d Cir.1974), the continuing delay leads the Court to the conclusion that denial of class certification constitutes the appropriate sanction.

However, the Court is aware that in a securities class action, denial of the class motion is a sanction almost as severe as dismissal of the complaint. Further, there is a limit on the extent to which a plaintiff should be enalized for the transgressions of his attorney. In light of these

factors, the Court denies the class motion for failure to comply with Rule 23(a)(4) and as a sanction under Rule 37, but does so without prejudice to renewal within seven days from the date of entry of this order upon a showing that plaintiff has filed full and complete answers to the "class" interrogatories as directed by the order of September 23,1975.

Motion denied without prejudice to renewal upon conditions set forth hereinabove.

SO ORDERED.

Dated: June 21, 1976
New York, New York

LAWRENCE W. PIERCE

U.S.D.J.

PETITION FOR WRIT OF MANDAMUS

Same Title

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, MERLE W. LEONARD, files this petition for a Writ of Mandamus, or a Writ of Prohibition, or Extraordinary Writ, or All of Them, to the HONORABLE LAWRENCE W. PIERCE, United States District Judge for the Southern District of New York, directing nullification of orders of that Judge, entered on September 23, 1975 and June 22, 1976, in the case of Merle W. Leonard v. Reynolds Securities, Inc., et al., Civil Action No. 72 Civ. 5065 (L.W.P.) in the United States District Court for the Southern District of New York. (A copy of the order of September 23, 1975 is attached hereto as Exhibit A, whereby the Honorable Lawrence W. Pierce, confirmed a report of Magistrate Gerard L. Goettel, a copy of which is annexed hereto as Exhibit B. A copy of

the order of June 22, 1976 is annexed hereto as Exhibit C). The report and orders permit defendants while motions for class determination are pending through interrogatories to "propound general questions relating to plaintiff's finances, his willingness to expend them and his awareness of his ultimate liability...." respecting the maintenance of this class action, and the circumstances under which plaintiff came to institute this action.

The interrogatories which were the subject of the motion are annexed hereto as Exhibit D. The relevant interrogatories are 16b-h, 17, 21, 24, 25, 26, 27, 29, 30, 31, 32, 33 and 34.

Under the order, plaintiff must submit answers on or before June 29, 1976 or face dismissal of his class action.

In support of the petition, petitioner shows as follows:

NATURE OF THE SUIT AND PROCEEDINGS

Petitioner brought the action entitled Leonard v. Merrill, Lynch, Pierce, Fenner, Smith, Inc., et al., 72 Civ. 5065 (L.W.P.) in the United States District Court, Southern District of New York, as a class action, contending that all sales of call options on stock were in violation of Section 5 of the Securities Act of 1933, as amended, on the

grounds that the sale of such options should have been registered under said Section with the Securities & Exchange Commission. The defendants have denied all material allegations of the complaint. The defendants have deposed plaintiff and have received answers to two sets of interrogatories. Throughout this discovery, plaintiff has objected to giving information respecting his finances and ability to fund the action if declared a class action. He has, however, committed himself to bearing all of the costs of the litigation.

Plaintiff first moved for class determination on June 21,1973 (the time for such motion having been appropriately extended). At defendants' request, that motion was deferred to permit a motion for partial summary judgment on behalf of certain defendants (which was granted on October 1, 1974, on the grounds that plaintiff had had no dealings with them) and to permit defendants to have discovery on "class issues." The Court did not pass upon nor consider the class motion of June 21,1973. After plaintiff responded to one set of interrogatories and appeared for his deposition and conducted his own discovery, he renewed the motion for class determination on September 25,1975; once again, defendants deferred responding to that motion while

they conducted further discovery on the "class questions." Thus, they served the second set of interrogatories, upon plaintiff's refusal to respond to interrogatories numbered 16b-h, 17, 21, 24-27, 29-34, this dispute arose.

Plaintiff has also conducted a limited discovery of defendants with respect to the dimensions of the class.

ISSUES PRESENTED ON THIS PETITION

Whether a plaintiff in an action which he has brought as a class action, must reveal his personal finances and demonstrate his ability to finance a class action in order to be an adequate representative of such class and have his action declared a class suit.

REASONS FOR ALLOWANCE OF THE WRIT

1. Petitioner recognizes that mandamus or other writ is an unusual remedy which is very rarely granted. However, where, as here, a discovery question is of extraordinary significance or there is extreme need for review and reversal of the District Court's order at this time, this Court will entertain applications for mandamus or other writ; American Express Warehousing, Ltd. v. Transamerica Ins. Co., 380 F.2d 277, 282-3 (2nd Cir. 1967); Investment Properties International, Ltd. v. I.O.S. Ltd., 459 F. 2nd, 705, 707 (2nd Cir. 1972).

PETITION FOR WRIT OF MANDAMUS

It is respectfully submitted that the issue in this proceeding is unique and sufficiently important to warrant this Court in granting the writ. Not only is there a conflict among various authorities considering the issue, including authorities in this Circuit, but the treatment to be accorded, once it has been determined that inquiry into financial resources is required is not uniform in this Circuit.

The issue on this application has been timely raised. The report of Magistrate Goettel held that the answers to the questions (which are the subject of the application) could be treated as follows:

> "If absolutely necessary, the motion could be taken in two steps; the first to determine class composition and, therefore, size, and the second, if the Court approves a large class, concerned with financial ability...."

The District Court confirmed Magistrate Goettel's decision on September 23, 1975, stating: "The Court will decide the issue as to the size of the class once sufficient discovery can be accomplished so that the issue can be presented...."

PETITION FOR WRIT OF MANDAMUS

After considerable analysis, we determined that plaintiff's discovery was complete to enable the issue to be presented in the two step manner contemplated. We determined that we could not seek mandamus in connection with the September 23, 1975 order in view of the two step procedure set forth; the issues would appear not to have sufficiently ripened.

Accordingly, we moved for summary judgment and renewed our motion for class determination on September 25, 1975, in order to resolve the question of class size. That size depends upon a determination of which party's contention is correct. We contend that this action is brought on behalf of all persons who bought options on any stock from these defendants. Defendants claim that plaintiff can represent only those who purchased options on the same stock as he did, viz, Cooper Tire and Rubber. If defendants' contention is adopted, the class is too small to meet the requirements of Rule 23 (as our discovery revealed). On the other hand, if plaintiff's contention is adopted (which has been asserted from the moment the complaint was filed), the size of the class was as stated in our moving papers.

The District Court denied our motion on June 23, 1976 insisting that the objected to questions must be answered, first, before consideration of the class motion, thereby

abrogating the two step procedure originally directed. Hence, the issues are now ripe for review.

2. The right to inquire into the financial resources of the plaintiff attempting to bring a class action has led to divided authorities both outside and inside this Circuit.

Cases which have denied the right to make inquiry into the financial resources of a plaintiff in order to determine whether he is an adequate representative of the class include Sanderson v. Winner, 507 F.2d 477 (10th Cir. 1974) cert. den. 421 U.S. 914; Begosian v. Gulf Oil Corp., 337 F.Supp. 1228 (E.D.Pa. 1971); Brown v. Senex, CCH Fed. Sec. L.R. ¶ 95,338 (E.D.Ky. 1975); Rosenberg v. Aktiebolaget Electrolux, et ano., 74 Civ. 3457 (Report of U.S. Magistrate confirmed by order of Judge Stewart; copy annexed hereto as an appendix); In Re Nissan Motor Antitrust Litigation, MDL No. 120 (S.D. of Fla. 1975, Opinion annexed as an Appendix hereto); the oral order of Judge Owen in Friedlander v. The City of New York, 75 Civ. 3981 (R.O.)

Cf. Amherst Leasing Corporation v. Emhart Corporation, 65 F.R.D. 121 (D. Conn. 1974).

On the other hand, the District Court at bar, felt that inquiry was permissible. In addition, Waldman v.

Electrospace Corporation, 68 F.R.D. 281 (S.D.N.Y. 1975) upheld inquiry into the financial resources of a plaintiff as did Ralston v. Volks Wagenwerk, A.G., 61 F.R.D. 427 (W.D. Mo. 1973) and P.D.Q. Inc. of Miami v. Nissan Motor Corp., in U.S.A., 61 F.R.D. 322 (S.D. Fla. 1973) the order of Judge Werker permitting limited inquiry "in camera" in Dennis v. Saks, 74 Civ. 4419 (H.F.W.).

The District Court required the answers to plaintiff's financial resources be given to all defendants' counsel. However in Waldman v. Electrospace Corporation, supra, the Southern District of New York permitted the inquiry to be made "in camera" without any of the defendants seeing the responses.

In view of the large number of class actions filed in the Southern District of New York and within this Circuit, it is respectfully submitted that the issue requires resolution by the Circuit Court as promptly as possible. Such resolution is appropriate in this action now.

3. We submit that this Court should decline to permit inquiry into a plaintiff's resources in determining whether or not a class action can be maintained. We submit the authorities which follow Sanderson v. Winner, is the more appropriate line to follow.

Indeed, any other decision would impede the right of a plaintiff sustaining an injury which is small in dollar amount to secure relief. If he is unable to bring class actions, the purposes of Rule 23 are defeated and he and others like him will be unable to secure redress.

There is nothing in Rule 23 which authorizes such inquiry or precludes a plaintiff from being an adequate representative where upon such inquiry it is disclosed that he lacks financial resources. Frauds are generally committed upon persons of modest means unable to secure proper advice or representation. No case has ever suggested that a plaintiff in order to be an adequate representative, must be a person of substantial means, able to bear the expenses of notice, etc. If a person has inadequate means, he is deprived of being able to bring such suit, since he will be unable to interest any attorney in handling his matter on any basis which he can afford.

As a matter of public policy, such inquiry should not be permitted. Such an inquiry would produce a chilling effect on and bound to discourage class action litigation. Two of our more important constitutional rights are those of privacy and the right to associate. People will hesitate to

reveal their private resources and thus would forego their rights to bring litigation when they have been injured - and to associate with others in a lawsuit to indicate those rig

Indeed, the vice of such inquiry becomes more noticeable since there is no suggestion what is conceived to be the expenses of this litig tio. Is it $1,000 or $100,000, or just what?

Presumably, the right to inquire into finances rests upon the notion that plaintiff is responsible for the costs of notice to the class. In Eisen v. Carlisle and Jacqueli 417 U.S. 156, 178 (1974), the Court recognized that the costs of notice might be borne by defendants when there is a fiduciary relationship involved. At the appropriate time, the Court would direct which party should bear the costs of notice, and until such time, inquiry is, at best, premature.

If such inquiry is allowed, where is the line to be drawn. Defendants do not have to give information about their resources or the amount of money they are prepared to spend in the case. Such information is quite valuable to the opposing party since he will be able to control the litigation pace and cause the resources to be expended unless it is ended or settled on his terms.

PETITION FOR WRIT OF MANDAMUS

On the other hand, a party bringing an individual action - no matter how large or complex - is immune from inquiry as to his financial resources.

It should be noted that class certification is tentative under Rule 23; defendants are not irreparably harmed by such certification. Yet, because of the threat of such tentative certification, they are permitted to such inquiry as to defeat the very purposes of Rule 23.

Rule 23 contemplates an early determination of class status (Rule 23(c)(1)). The District Court's Rules require the motion to be made within 60 days after commencement of the action (Civil Rule 11A(c). On a class motion "speed is of the essence." Professional Adjustment Systems of America, Inc. v. General Adjustment Bureau, Inc., 64 F.R.D. 35, 38 (S.D.N.Y. 1974). Yet although plaintiff moved timely, the class motion is not decided - 4 years later - because of defendants' unnecessary discovery on "class issues."

For all the foregoing reasons, this Court should grant a Writ of Mandamus, and vacate the order of Judge Pierce below and, in view of the requirement that answers be supplied by June 29, 1976, the operation of that order should be stayed in the interim.

Dated: June 24, 1976.

A. ARNOLD GERSHON
DEMOV, MORRIS, LEVIN & SHEIN

PETITION FOR WRIT OF MANDAMUS

Exhibit A -- Endorsement Order of September 23,1975

(See, A178)

PETITION FOR WRIT OF MANDAMUS

Exhibit B - Magistrate's Report and Recommendation

(See A164)

PETITION FOR WRIT OF MANDAMUS

EXHIBIT D Defendants Interrogatories-Second Set

(See A93)

PETITION FOR WRIT OF MANDAMUS

Exhibit C - Opinion dated June 21, 1976.

(See A125)

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERMAN ROSENBERG and AVIS ROSENBERG, individually and on behalf of members of the class similarly situated,

Plaintiffs,

-v-

AKTIEBOLATET ELECTROLUX and NATIONAL UNION ELECTRIC CORPORATION,

Defendants.

REPORT OF UNITED STATES MAGISTRATE

74 Civ. 3457 (CES)

TO THE HONORABLE CHARLES E. STEWART, U.S.D.J.:

This report relates to the following motions heretofore referred by you to me for review and recommendation:

1. Motion by plaintiff Herman Rosenberg under Rule 37, filed December 10, 1974, to compel defendant National to respond to interrogatories;
2. An ex parte application, dated December 11, 1974, by defendant National to strike the aforementioned Rule 37 motion;
3. Motion by the plaintiff Herman Rosenberg, filed January 2, 1975, to compel the defendant Electrolux to answer interrogatories;

APPENDIX

4. A motion by the defendant Electrolux, filed December 24, 1974, to compel Herman Rosenberg to answer questions which he allegedly refused to answer during oral deposition.

A brief statement of the factual background of this case is appropriate. This is a class action to recover damages allegedly sustained by plaintiffs and other members of the class by reason of alleged misrepresentations and concealment of material information by defendants in press releases and announcements made to the public in 1974.

It would appear that on March 15, 1974, National issued a public statement to the effect that discussions were being held between National and Electrolux concerning a tender offer by Electrolux to National shareholders for slightly over 50 percent of the outstanding National stock. Electrolux shortly thereafter confirmed the existence of such discussions, and on March 27, 1974, Scovill Mfg. Co. announced its entry into joint discussions with National and Electrolux concerning possible joint acquisition of all of the outstanding shares of National.

On May 8, 1974 it was publicly announced by Electrolux and Scovill that their negotiations with Natonal had terminated.

APPENDIX

Such announcement was published in the New York Times and the Wall Street Journal on May 9, 1974.

Plaintiffs, in alleged reliance on aforementioned reports, sold the National stock which they then owned. However, on June 19, 1974 Electrolux announced its willingness to purchase all of its outstanding shares from National at $28 a share, a price which was higher than the earlier quoted price or the then current price for National stock on the New York Stock Exchange.

Discussion of Motion #1.

Plaintiffs' initial interrogatory requests National to advise when it first became aware of Electrolux's plans to acquire National's stock. It is objected to as irrelevant, since it relates to events prior to March , 1974. The objection is without merit and should be overruled.

The second interrogatory asks for names of the corporate representative who first acquired such knowledge and any written communications respecting thereto. It is a completely proper interrogatory and the objection should be overruled.

The third interrogatory asks for information concerning

APPENDIX

communications between National and Electrolux relating to the planned acquisition. Here again, the interrogatory is quite proper and should be answered.

The fourth interrogatory has been answered.

Plaintiffs' fifth interrogatory seeks information relating to various contacts between National and third parties in connection with the aforementioned proposed merger. Again, the interrogatory appears quite proper and falls within the broad range of permissible discovery under applicable Federal Rules.

The objection on the ground of improper "time frame" is also without merit. This Court has consistently allowed discovery in matters like this prior to and subsequent to the time of the alleged violation. See, e.g., Quonset Real Estate v. Paramount, 50 F.R.D. 240, S.D.N.Y. 1970; Midland v. Van Alstyne, 59 F.R.D. 134, S.D.N.Y. 1973.

Motion #2, Discussion.

Motion #2 is in effect an application presented by counsel for the defendant National in the form of a proposed ex parte order, to "strike" Motion #1, first, on the ground that the motion was served less than five days prior to the time specified for the hearing, secondly, on the ground that the motion was filed

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without a certificate, pursuant to Rule 9(f) of the General Rules of this Court, indicating that the movant had conferred with counsel in an effort to resolve the issues raised by the motion.

The allegation that the motion was served less than five days before the return date thereof is disputed, and in any event there is no showing of prejudice caused by the alleged "short notice", since abundant opportunity has been afforded to all litigants to address themselves to the merits of the motion.

Insofar as the Rule 9(f) certificate is concerned, that requirement merely entitles the Court, at its discretion, to decline to hear the motion absent the filing of such certificate. As far as I am concerned, the enforcement of the Rule is dispensed with and for that reason I have dealt with Motion #1, as above indicated, on the merits.

Discussion of Motion #3.

Motion #3 deals essentially with the same subject matter as Motion #1, namely the circumstances of the negotiations respecting the acquisition of National's stock, Motion #3, however, being concerned with interrogatories addressed to the other defen-

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dant herein, Electrolux. Since the substance of the interrogatories and the objections are both the same as in respect to Motion #1, the same ruling is recommended, that is to say, granting of the motion in toto.

Discussion of Motion #4.

Motion #4 is a motion by the defendant Electrolux to compel the plaintiff Rosenberg to answer questions put to him during oral EBT concerning his prior activity as a purchaser of stock, his motivation in bringing the lawsuit, and his financial ability.

I agree wholeheartedly with the objection by plaintiffs' counsel that Mr. Rosenberg's prior activity in the stock market has no proper bearing upon the propriety of Mr. Rosenberg's representing a class of people who were allegedly victimized by fraudulent announcements made by the defendants. I would therefore uphold the refusal to answer questions along those lines.

As far as the remainder of the questions are concerned, they seem primarily to be concerned with plaintiffs' ability to underwrite the expenses of maintaining this class action. The issue of whether that line of questioning is proper has been

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the subject of divergent Court holdings. In some cases the Courts have allowed discovery along those lines, see, e.g., PDQ Inc. of Miami v. Nissan Motor Corp., 61 F.R.D. 372 (S.D. Fla. 1973); Ralston v. Volkswagon, 61 F.R.D. 427 W.D. Mo. 1973). To the contrary, however, see Sanderson v. Winner, 19 FR Serv. 2d 429 (10th Cir. 1974); Sayre v. Abraham Lincoln Federal Savings Association, 19 FR Serv. 2d 311 (E.D.Pa. 1974). In any event, however, it seems to be the law that once a plaintiff has demonstrated his basic financial ability to carry on the class action, further discovery should be prohibited as irrelevant and unnecessary prying into the personal affairs of the defendant.

In the instant case, however, assuming that limited discovery is appropriate to determine the plaintiffs' financial ability, the fact of the matter is that in the instant case the class which plaintiff seeks to represent is limited to approximately 1250 people. Under such circumstances, it is perfectly obvious that the plaintiff has sufficient financial means to underwrite the cost of adequate notice to the class in this case. That being so, further discovery relating to Mr. Rosenberg's personal financial assets appears totally unnecessary and objectionable.

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Accordingly, I would recommend that the motion by Electrolux be denied in all respects.

Copies of this report have been mailed this date to counsel for the interested parties, who are instructed that any objections hereto must be filed at your chambers within ten days unless the time for so doing is further extended by you.

* * *

Dated: New York, N.Y.
April 18, 1975.

Respectfully submitted,

HAROLD J. RABY
UNITED STATES MAGISTRATE

cc: HERMAN CAHN, ESQ.
101 Park Avenue, N.Y.C. 10017

SULLIVAN & CROMWELL, ESQS.
48 Wall Street, N.Y.C. 10005

DEMOV, MORRIS, LEVIN & SHEIN, ESQS.
40 West 57th Street, N.Y.C. 10019

APPENDIX

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE NISSAN MOTOR CORPORATION ANTITRUST LITIGATION — MDL Docket No. 120

RICHARD E. HITT, on behalf of himself and all others similarly situated,

Plaintiffs

vs — No. 74-1647-Civ-CA

NISSAN MOTOR COMPANY, LTD., ET AL,

Defendants

SUPREME TITLE COMPANY, a New Jersey corporation, on behalf of itself and all others similarly situated,

Plaintiffs,

vs — No. 74-1652-Civ-CA

NISSAN MOTOR COMPANY, LTD., ET AL

Defendants

FILED
JUN 4 1975
JOSEPH L. ROSART
CLERK, U. S. DIST. CT.
SOUTHERN DIST. OF FLA.
MIAMI, FLA.

* * *

APPENDIX

CLASS ACTION DISCOVERY MOTIONS

THIS CAUSE is before the Court on certain motions of of plaintiffs and defendants in the above captioned cases relating to discovery concerning class action determinations currently pending before this Court. For the reasons outlined below:

1. The joint motion by Nissan Motor Corporation in United States of America for an order or orders pursuant to Rule 37, Federal Rules of Civil Procedure, compelling production of documents and permitting the questioning of plaintiffs on certain subjects relating to class action questions in the ten transferred cases (docket 419) is denied.

2. The motion by defendant Nissan Motor Corporation in United States of America to compel production of documents by plaintiff (docket 435) in the ten transferred cases is denied.

3. Plaintiff's motion for a Rule 26(c) protective order precluding further depositions of the Novaks (docket 426) in nine of the transferred actions is granted.

4. The motion of certain New Jersey Nissan dealers for

an order compelling answers to deposition questions asked plaintiff and compelling the production of documents (docket 283)in case 74-1652-Civ-CA is denied.

5. Plaintiff Supreme Title Company's motion for an order pursuant pursuant to Rule 26(c), Federal Rules of Civil Procedure, that discovery not be had (docket 414) in Case No. 74-1652-Civ-CA is denied as moot.

6. Nissan Motor Corporation in United States of America's motion for order compelling answers to deposition questi asked plaintiff by defendants and compelling the production of doc ments (docket No. 225) in case No. 74-1697-Civ-CA is denied.

7. The motion by Nissan Motor Corporation in United States of America for order compelling answers to deposition questions asked plaintiffs by defendant and compelling the production of documents (docket 219) in case No. 74-1698-Civ-CA is denied.

8. The motion by Louisiana dealer-defendants for order compelling answers to deposition questions asked plaintiff, Cynthia Riley, and compelling the production of documents (docket 448)

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in case No. 75-3-Civ-CA is denied.

9. Nissan Motor Corporation in United States of America's motion for order pursuant to Rule 37, Federal Rules of Civil Procedure, compelling the production of documents and permitting the questioning of plaintiff on certain subjects related to class action questions (266) in Case No. 75-61-Civ-CA is denied.

At issue in the above motions is discovery related to plaintiffs are adquate class representatives under Rule 23(a)(4), Federal Rules of Civil Procedure. More specifically, (1) Should discovery be limited as to whether plaintiffs can afford adequately to notify the class or should it include matters such as income tax returns, financial statements presumably related to whether plaintiffs have the ability and willingness to incur costs necessary to pursue the class actions to completion. (2) Also at issue is whether fee-financial arrangements between plaintiffs and counsel are covered by the attorney-client privilege, whether they are relevant, and/or whether discovery of them is likely to lead to the discovery of admissable evidence. (3) Finally,

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defendants seek to discover the circumstances surrounding how plaintiffs came to approach their attorneys, any communications between said plaintiff, his, her or its attorneys and any member of the class said plaintiff purports to represent, the relevance of these and whether they are covered by the attorney-client privilege are at issue.

1. Rule 23(c)(2), Federal Rules of Civil Procedure and the due process notice standards it incorporates require that a Rule 23(b)(3) class action plaintiff class representative initially bear the cost of notice to the class and that individual notice shall be sent to all class members who can be identified with reasonable effort. Eisen v. Carlisle Jacquelin, et al., 417 U.S. 156, 177-178 (1974); Sanderson v. Winner, 507 F.2d 477 (10th Cir. 1974); cert. denied April 14, 1975; Alabama Optometric Assn., et al, v. Alabama State Board of Health, et al, 379 F. Supp. 1332; 1341 (M.D. Ala. 1974). All plaintiffs in the cases sub judice have indicated through deposition testimony willingness and ability to pay the costs of notifying members of the respective classes. Thus, the notice requirement in Rule 23 (c)(2) as construed by the Supreme Court in Eisen, supra, is satisfied. Should the classes be larger

APPENDIX

than expected or the funds allocated for paying notice be smaller than anticipated this Court can consider this in certifying the class sizes. See P.D.Q., Inc. v. Nissan Motor Corporation in U.S.A. 61 F.R.D. 372 (S.D. Fla. 1973). Accordingly, since awareness of earning capacities or incomes is not required by Rule 23, and consequently, not in issue, this Court declines to order or allow discovery related to them. Furthermore, discovery of income tax returns in these cases would tend to invade the plaintiffs' privacy and have a "chilling effect" upon the bringing and maintenance of class action suits contrary to the intent of Congress. See, e.g., Federal Savings & Loan Ins. Co. V. Krueger, 55 F.R.D. 512 (N.D. Ill. 1972); Dook v. Superior Court, 257 C.A. 2d 825, 832, 65 Cal. Rptr. 193 (1968); State of Hawaii v. Standard Oil Co. of California, 405 U.S. 251, 262, 92 S. Ct. 885, 31 L. Ed. 2d 184 (1972). This Court is cognizant of the tremendous costs attending the execution of class action lawsuits such as those presently before this Court, Kahan v. [illegible] F.R.D. 427 (W.D. Mo. 1973), as well as the res judicata problem possibly associated with an inadequately financed class action, Gonzales v. Cassidy, 474 F.2d 67 (5th Cir. 1973). However, an

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opposite result here could restrict antitrust plaintiffs to corporations, municiplaities or to the affluent, [Sanderson, supra] and such a restriction would mean possible antitrust offenders could add a powerful discovery weapon to their sheath, a result Congress could not have intended. At a subsequent time, this Court will require conditioning the continuation of these lawsuits as class actions upon the posting of cost deposits by named plaintiffs to cover the costs of notice. This would be sufficient to protect defendants from sham proceedings and indicative of plaintiffs' intent to execute these lawsuits with appropriate vigor.

2. In view of the foregoing discussion, this Court finds that the fee-financial arrangements between the plaintiffs and counsel are also irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in accordance with Rule 26(b)(1), Federal Rules of Civil Procedure. See Sanderson, supra. Thus, no attempt is made by this Court to decide whether such arrangements fall within the attorney-client privilege. The above listed motions insofar as they relate to compelling discovery of this information are denied without prejudice since at this time there is no suspicion or probable cause of any breach of pro-

fessional conduct. Should defendants' counsel, by affidavit, wish further consideration by the Court on this matter they may do so. It should be noted, however, that Courts have been permissive in this regard since vindication of federal policy and the public interest through antitrust class actions has depended largely upon plaintiffs and their counsel acting as "private attorneys general."

The circumstances surrounding plaintiffs' initial contact with counsel, unlike the foregoing matters which defendants seek to discover, apparently reach the issues of whether any unethical conduct of plaintiffs' counsel has occurred and whether any such conduct is sufficiently egregious to warrant in the dismissal of the class action motions outstanding. See language in Stavrides v. Mellon National Bank & Trust Co., 60 F.R.D. 634, 636-7 (W.D. Pa. 1973), where the Court ordered such information discoverable. However, class action status has been denied where counsel's unethical conduct has been prejudicial to the interests of the class or results in creating a conflict of interest between the attorney and the class so that the attorney is unable to protect the interests of the class. Id. Case law stands for the proposition that such conduct must be extremely offensive to warrant denial of certificat

in view of the policy favoring class action and antitrust suits. See, e.g., Halverson v. Convenient Food Mart, Inc., 458 F. 2d 927 (7th Cir. 1972). It is difficult to imagine how any incidental solicitation which may have occurred in the instant lawsuits could have a prejudicial effect sufficient to fall within the guidelines above and thereby warranting denial of class status. The better disposition should be to substitute counsel to avoid unduly delaying reaching the merits and prejudicing plaintiffs' rights. Accordingly, since further discovery into the area could only result in an administrative morass for all parties and for this Court, no substantial purpose can be seen for ordering such discovery and this Court declines to so order in absence of any probable cause or suspicion to warrant it. The above motions insofar as they relate to compelling discovery of this information are denied without prejudice. This Court would, upon affidavit, be amenable to reconsideration but defendants' counsel should be cognizant that Bar organizations may be better equipped than this

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Court to handle possible ethics grievances. Indeed, it may be counsel's duty to report any such matters to the appropriate agency.

Any matters raised in the above motions but not specifically mentioned in the above discussion were duly considered in ruling on the motions but resource considerations did not warrant their discussion herein.

DONE AND ORDERED at Miami, Florida, this 14th day of June, 1975.

UNITED STATES DISTRICT JUDGE

ORDER DENYING WRIT OF MANDAMUS

76-3041
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Merle W. Leonard,

Petitioner,

v.

Honorable Lawrence W. Pierce,
United States District Judge for
the Southern District of New York,

Respondent.

Merle W. Leonard,]
Plaintiff]
v.]
Reynolds Securities,]
Inc. et.al.]
Defendants]

A petition for a writ of mandamus having been filed together with a motion for a stay,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is ~~granted~~ denied

~~XXXX

ORDER DENYING WRIT OF MANDAMUS

order on the judge (or judges) named respondent (s) and on all other parties to the action in the trial court.

[redacted]

Further ordered that a stay pending determination of said petition be and it hereby is [redacted] denied.

William A. Mulligan
William Hughes Mulligan

Murray I. Gurfein

Dated: June 29, 1976

PLAINTIFF'S FURTHER ANSWERS TO INTERROGATORIES

Same Title

1. No options have been acquired since those previously listed in answers supplied to interrogatories dated January 29, 1972. All such information with respect to the options listed in those earlier answers have been supplied in such answer.

2. Not applicable.

3. Not applicable as to any options purchased since the date of plaintiff's answers to interrogatories dated January 29, 1972.

(a) No;

(b) Not applicable;

(c) (i) Yes; (ii) No; (iii) No;

(d) (i) A representative of J.C. Bradford & Co. recommended the purchase of Cooper Tire & Rubber Stock, which I could not afford to purchase. Accordingly, I purchased a call option. Recommendations were given to me to purchase call options on the

PLAINTIFF'S FURTHER ANSWERS TO INTERROGATORIES

following stocks by Reynolds & Company: - Strutherwells; Duplane Corp. and Rath Packing. Call options were recommended by duPont for Duplane Corp. (6/7/71 purchase Atlantic Ridgefield and Universal Oil Products. The name of the registered representative of J.C. Bradford & Co. recommended Cooper Tire & Rubber to me was Ralph Compton. I do not recall the names of the registered representatives of the other defendants at this time;

(ii) No documents are in existence;

(iii) I do not recall the substance of the oral discussions, conversations or communications, except that recommendations were made to purchase call options on the stocks indicated and in the case of Cooper Tire & Rubber, after I had indicated I could not purchase stock of Cooper Tire & Rubber, a recommendation was made to purchase a call option.

(iv) (a) (b) See answer to paragraph 3 above.

5. No.

6. No.

7. Not applicable.

8. No.

9. Not applicable.

16(b) I have incurred all of the costs and expenses incurred by counsel in this litigation. I have not yet been billed for those costs and expenses; I have also incurred the expense of travelling to New York for deposition. Such cost totalled $167.12.

(d) The amount of such costs have totalled $717.76 to date.

(e) Xeroxing expense has totalled $225.69 travel expense $274.73; overtime and other miscellaneous expenses $143.64; phone, $26.50, messengers, etc. $47.25;

(f) No amount has yet been paid to counsel However, I expect to reinburse counsel for all expenses incurred in this litigation;

PLAINTIFF'S FURTHER ANSWERS TO
INTERROGATORIES

(g) I have not as yet been billed by counsel the costs and expenses in this litigation;

(h) There are no writings.

17. I am willing to pay and able to pay the amount of my net worth which is approximately $22,500.00.

21. (a)-(b) See answer to paragraph 17.

23. The number stated in the prior answers dated June 11, 1975, viz. 7,500, is the approximate number of members of the class. Plaintiff cannot be more precise since such information lies exclusively in the possession of defendants and the documents which they have permitted plaintiff to examine did not reveal the names of the members of the class from which we could make a precise determination.

24. Yes.

25. (a) A. Arnold Gershon;

(b)-(c) Plaintiff declines to answer this interrogatory upon the grounds that it

calls for privileged communication between attorney and client;

(d) Plaintiff cannot state what information was known to A. Arnold Gershon except to state that Mr. Gershon had such information as plaintiff provided, together with the request by plaintiff to determine if any cause of action existed. Mr. Gershon did whatever research was required from which he presumably made his recommendations;

(e) Plaintiff does not know;

(f)-(g) Plaintiff declines to answer this interrogatory upon the grounds that it calls for privileged communications between attorney and client.

26. Yes.

27. See answer to paragraph 24 and paragraph 25. In addition, plaintiff states, without in any way waiving any attorney-client privilege, that he communicated with counsel respecting a potential claim that he felt he had,

and received recommendations respecting the institution of the lawsuit only after such communication.

29. Plaintiff has no interest adverse to that of any member of the class. He purchased a call option upon a security, as did every other member of the class, during the period alleged in the complaint. Each such call option should have been registered under provisions of the Securities Act of 1933, as amended. Thus, plaintiff stands in the same position of every other member of the class and he has instituted the action, hired competent counsel, and is prepared to litigate, and has been litigating this action to achieve a recovery for all the class.

30. (a) 7,500 members;

(b) Not known, since defendants have refused to disclose such information to plaintiff;

(c) All such lists are in the possession of the defendants;

(d) An examination of the records of defendants to determine all persons who purchased call options during the period alleged in the complaint.

PLAINTIFF'S FURTHER ANSWERS TO
INTERROGATORIES

31. See answer to paragraph 29.

32. Plaintiff contends that all call options should have been registered under the Securities Act of 1933, as amended. Since such call options were not registered, all such purchases are void. Hence, the issue of whether call options are securities to be registered under the 1933 Act is an issue of law and fact common to every member of the class who purchased a call option.

33. The sole issue is whether call options should have been registered under the Securities Act of 1933, as amended. This issue predominates over any individual issue which may exist. In fact, plaintiff knows of no individual issue which is even present in this litigation.

34. A class action is superior, simply because it is better to have one suit deciding the question and have the decision binding on all 7,500 members of the class, than to have 7,500 individual actions brought throughout the country litigating the very same question, with all of the dangers of duplication, waste, burdens upon litigants and court, and the possibility of inconsistent results.

39. No.

PLAINTIFF'S FURTHER ANSWERS TO
INTERROGATORIES

40. Inapplicable.

41. No.

42. Inapplicable.

Dated: June 29, 1976.

AS TO OBJECTIONS:

A. ARNOLD GERSHON
DEMOV, MORRIS, LEVIN & SHEIN

By _____
A Member of the Firm

Attorneys for Plaintiff

AS TO ANSWERS TO INTERROGATORIES:

IRVING BIZAR - Pursuant to Authority
Given by Plaintiff on June 29,1975.

PLAINTIFF'S FURTHER ANSWERS TO INTERROGATORIES

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

IRVING BIZAR, being duly sworn, deposes and says: That he is a member of the firm of Demov, Morris, Levin & Shein, attorneys for plaintiff herein; that he resides within the City of New York; that he has read and knows the contents of the foregoing Plaintiff's Further Answers to Defendants' Second Set of Interrogatories; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

That the reason why this verification is made by deponent and not by plaintiff is that the plaintiff is not within the County of New York, where deponent has his office; and made pursuant to express authorization given on June 29,1976.

Sworn to before me this
29 day of June,1976.

MILDRED B. HONIG
NOTARY PUBLIC, State of New York
No. 41-1660361 Queens County
Certificate filed in New York County
Term Expires March 30, 19[illegible]

PLAINTIFF'S RENEWAL OF MOTION FOR
SUMMARY JUDGMENT AND CLASS DETERMINATION

Same Title

S I R S :

PLEASE TAKE NOTICE that, upon the annexed affidavit of IRVING BIZAR, sworn to August 4, 1976, the order of this Court, dated June 22, 1976, plaintiff's further answers to defendants' second set of interrogatories, the pleadings and prior proceedings herein, the undersigned will move this Court on August 18,1976, or as soon thereafter as counsel can be heard, renewing his motion, dated September 29, 1975, for an order (1) pursuant to FRCP Rule 23 and Rule 11A of the Civil Rules of this Court, determining this action to be a class action and (2) pursuant to FRCP Rule 56(a), granting partial summary judgment to plaintiff and the class against all defendants, declaring said defendants to be liable to plaintiff and the class, and for such other and further relief as the Court may deem just and proper. On said return date, this motion will be submitted.

Dated: August 5, 1976.

A. ARNOLD GERSHON
DEMOV, MORRIS, LEVIN & SHEIN

By _____
A Member of the Firm

PLAINTIFF'S RENEWAL OF MOTION FOR
SUMMARY JUDGMENT AND CLASS DETERMINATION

Same Title

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

IRVING BIZAR, being duly sworn, deposes and says:

I am a member of the bar of this Court and of the firm of Demov, Morris, Levin & Shein, co-counsel with A. Arnold Gershon, for the above named plaintiff. I am familiar with the facts and prior proceedings herein and make this affidavit in support of the annexed application for renewal of plaintiff's earlier motion dated September 29, 1975, which sought (1) class determination pursuant to Rule 23(b) FRCP and (2) partial summary judgment on the issue of liability against defendant pursuant to Rule 56 FRCP.

A copy of the original motion dated September 29, 1975, is annexed hereto as Exhibit I and made part hereof.

It is respectfully submitted that the motion is now ripe for consideration.

The original class action motion was made in June of 1973, and no decision was rendered thereon.

PLAINTIFF'S RENEWAL OF MOTION FOR
SUMMARY JUDGMENT AND CLASS DETERMINATION

Plaintiff thereafter moved on September 29, 1975 for class determination and for partial summary judgment. This Court ruled on that motion and defendants' cross-motions on June 21, 1976 and denied said motion with leave to renew upon the filing of full and complete answers to the "class" interrogatories as directed by the order of the Court of September 28, 1975. These were served and filed on or about June 29, 1976.

To date, no objection to said interrogatory answers have been received from the defendants.

Plaintiff waited an appropriate period of time to allow defendants an opportunity to examine said answers and to object thereto, if they wished. Since no objections have been received, it is respectfully requested that the motion be renewed, and it is submitted that the question is now ripe for the determination by this Court.

Sworn to before me this
5th day of August, 1976.

MILDRED B. HONIG
NOTARY PUBLIC, State of New York
No. 41-1850361 Queens County
Certificate filed in New York County
Term Expires March 30, [illegible]

PLAINTIFF's VERIFICATION DATED
JULY 2,1976

Same Title

STATE OF GEORGIA)
: ss.:
COUNTY OF DeKalb)

MERLE W. LEONARD, being duly sworn, deposes and says that deponent is the plaintiff in the within action; that deponent has read the foregoing Plaintiff's Further Answers to Defendants' Second Set of Interrogatories and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, deponent believes it to be true.

Merle W Leonard
Merle W. Leonard

Sworn to before me this
2nd day of July, 1976.

Notary Public, Georgia, State at Large
My Commission Expires Dec. 22, 1978

MEMORANDUM OPINION OF DISTRICT COURT
(PIERCE, D.J.)

Same Title

72 Civ. 5065, Merle W. Leonard -v- Reynolds Securities, Inc.

ENDORSEMENT ORDER

Plaintiff moves for class certification and for partial summary judgment. The motion for class certification pursuant to Rule 23 Fed.R.Civ.P. is denied. See Leonard v. Reynolds Securities, Inc., 72 Civ. 5065 (S.D.N.Y. June 21, 1976), pet. for mandamus denied, No. 76-3041 (2d Cir. June 29, 1976).

Counsel for defendants has requested an extension of time in which to respond to the motion, and the Court determines that such an extension should be granted with respect to the issues remaining. Accordingly, all papers in opposition to the motion for partial summary judgment shall be filed within thirty days of the filing of this order.

SO ORDERED.

LAWRENCE W. PIERCE
U. S. D. J.

Dated: New York, N.Y.
August 18, 1976